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## Part III

### Department of Commerce

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National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Parts 300 and 679

Pacific Halibut Fisheries; Catch Sharing Plan for Guided Sport and  
Commercial Fisheries in Alaska; Final Rule

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 15 CFR Part 902

## 50 CFR Parts 300 and 679

[Docket No. 101027534–3999–02]

RIN 0648–BA37

## Pacific Halibut Fisheries; Catch Sharing Plan for Guided Sport and Commercial Fisheries in Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues regulations to implement a catch sharing plan for the guided sport (charter) and commercial fisheries for Pacific halibut in waters of International Pacific Halibut Commission Regulatory Areas 2C (Southeast Alaska) and 3A (Central Gulf of Alaska). This catch sharing plan replaces the Guideline Harvest Level program, defines an annual process for allocating halibut between the charter and commercial fisheries in Area 2C and Area 3A, and establishes allocations for each fishery. The commercial fishery will continue to be managed under the Individual Fishing Quota system. To allow flexibility for individual commercial and charter fishery participants, the catch sharing plan also authorizes annual transfers of commercial halibut quota to charter halibut permit holders for harvest in the charter fishery. This action is necessary to achieve the halibut fishery management goals of the North Pacific Fishery Management Council.

**DATES:** Effective January 13, 2014.

**ADDRESSES:** Electronic copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (Analysis) prepared for this action are available from <http://www.regulations.gov> or from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>. A Final Regulatory Flexibility Analysis (FRFA) was prepared and is included in the Classification section of this final rule.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99082–1668, Attn: Ellen Sebastian, Records Officer, in person at NMFS, Alaska Region, 709 West 9th Street,

Room 420A, Juneau, AK; and by email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or fax to (202) 395–7285.

**FOR FURTHER INFORMATION CONTACT:** Julie Scheurer, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** This final rule implements the catch sharing plan for the halibut fisheries for International Pacific Halibut Commission regulatory areas 2C and 3A in Alaska. NMFS published a proposed rule in the **Federal Register** on June 28, 2013 (78 FR 39122) with comments invited through August 12, 2013. The comment period was extended to August 26, 2013 (78 FR 44920, July 25, 2013).

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## I. Regulatory Authority

A comprehensive history of management of the charter fishery for halibut was published in the proposed rule for this action (78 FR 39122, June 28, 2013).

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations implementing the Northern Pacific Halibut Act of 1982 (Halibut Act) (16 U.S.C. 773–773k). The IPHC adopts regulations governing the Pacific halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979). For the United States, regulations developed by the IPHC are subject to acceptance by the Secretary of State with concurrence from the Secretary of Commerce. After acceptance, NMFS publishes the IPHC regulations in the **Federal Register** as annual management measures pursuant to 50 CFR 300.62. The final rule

implementing IPHC regulations for the 2013 fishing season was published March 15, 2013 (78 FR 16423). IPHC regulations affecting sport fishing for halibut and vessels in the charter fishery in Areas 2C and 3A may be found in sections 3, 25, and 28 of that final rule.

The Halibut Act, at sections 773c(a) and (b), provides the Secretary of Commerce with general responsibility to carry out the Convention and the Halibut Act. In adopting regulations that may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act, the Secretary of Commerce is directed to consult with the Secretary of the department in which the U.S. Coast Guard is operating (currently the Department of Homeland Security).

The Halibut Act, at section 773c(c), also provides the North Pacific Fishery Management Council (Council) with authority to develop regulations, including limited access regulations, that are in addition to, and not in conflict with, approved IPHC regulations. Regulations developed by the Council may be implemented by NMFS only after approval by the Secretary of Commerce. The Council has exercised this authority in the development of subsistence halibut fishery management measures and the guideline harvest level (GHL) program, codified at 50 CFR 300.65, and the limited access program for charter operators in the charter fishery, codified at 50 CFR 300.67. The Council also developed the Individual Fishing Quota (IFQ) Program for the commercial halibut and sablefish fisheries, codified at 50 CFR part 679, under the authority of section 773c(c) of the Halibut Act and section 303(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

The Council developed the regulations to implement this catch sharing plan pursuant to section 773c(c) of the Halibut Act.

## II. Catch Sharing Plan for Area 2C and Area 3A

The following paragraphs summarize the catch sharing plan (CSP) implemented by this final rule. Additional information is provided in the preamble to the proposed rule.

## A. Need for Action

The Council developed the CSP in IPHC Regulatory Areas 2C and 3A to address the ongoing allocation conflict between the commercial and charter halibut fisheries. The commercial halibut fishery is subject to defined allocations of individual harvest shares that generally rise and fall with changes

in halibut abundance, while the allocations to the charter halibut fishery, which experienced many years of sustained annual growth in Areas 2C and 3A, were not increased or decreased in direct relationship with changes in fishery abundance. The commercial IFQ and charter halibut fishery are harvesting a fully utilized resource. The primary objectives of the CSP are to define an annual process for allocating halibut between the charter and commercial halibut fisheries in Area 2C and Area 3A, establish by regulation sector allocations that vary in proportion with changing levels of annual halibut abundance and that balance the differing needs of the charter and commercial halibut fisheries over a wide range of halibut abundance in each area, and describe a public process by which the Council may develop recommendations to the IPHC for charter angler harvest restrictions that are intended to limit harvest to the annual charter halibut fishery catch limit in each area.

#### *B. General*

The CSP allocations will replace the GHL with a percentage allocation of the annual combined (commercial and charter) catch limit to the charter halibut fishery, with the remainder allocated to the commercial halibut fishery. The Council intends to continue the process it used in 2011 and 2012 to recommend to the IPHC annual management measures for the charter halibut fishery prior to the upcoming fishing season based on projected harvests and charter catch limits.

The annual CSP catch limits for the commercial and charter halibut fisheries will be determined by a predictable and standardized process by which the IPHC develops and adopts its annual management measures for the halibut fisheries. This rule establishes a regulatory formula for determining the commercial and charter halibut fisheries' catch limits for each area. The IPHC's annual combined catch limits for 2C and 3A will be apportioned between the annual charter catch limit and annual commercial catch limit in each area in accordance with the CSP's sector allocation formula published in this final rule. At its annual meeting in

January, the IPHC will consider the Council's recommendations designed to constrain the charter halibut fisheries in 2C and 3A to their allocated annual catch limits, and will consider the advice of IPHC staff, advisors, and the public. The IPHC will be expected to adopt the catch limits and appropriate management measures necessary to maintain the sectors' harvest within those catch limits as part of the IPHC's halibut fishery conservation and management regulations. Should the Secretary of State accept the IPHC regulations, with concurrence of the Secretary of Commerce, the approved IPHC regulations will be published in the **Federal Register** as specified by regulations at 50 CFR 300.62.

The IPHC annual management measures remain in effect until superseded. In most years, the effective date of the IPHC annual management measures has been around March 15. Thus, the period between the February 1 opening of the sport season and the mid-March effective date of the superseding annual management measures has been subject to the previous year's IPHC regulations. This schedule will continue unless the IPHC changes the February 1 opening for the sport fishing season. However, implementation of the annual management measures in March likely does not impact the charter halibut fishery because there has historically been little or no charter halibut harvest from February 1 through mid-March.

Alaska Department of Fish and Game (ADF&G) saltwater charter logbooks will be used as the primary data source to estimate the number of halibut harvested in the charter halibut fishery following each charter halibut fishing season and to project the number of halibut harvested in the charter fishery in the following year. The ADF&G saltwater charter logbook is the primary reporting requirement for operators in the charter fisheries for all species harvested in saltwater in Areas 2C and 3A.

In order to provide flexibility for individual commercial and charter halibut fishery participants, the CSP authorizes annual transfers of commercial halibut IFQ as guided angler fish (GAF) to charter halibut

permit holders for harvest in the charter halibut fishery. GAF offers charter halibut permit holders in Area 2C or Area 3A an opportunity to lease a limited amount of IFQ from commercial quota share (QS) holders to allow charter clients to harvest halibut in addition to, or instead of, the halibut harvested under the daily bag limit for charter anglers. Charter anglers using GAF are subject to the harvest limits in place for unguided sport anglers in that area. Currently, there is a two-fish of any size daily bag limit for unguided sport anglers in Areas 2C and 3A. GAF harvested in the charter halibut fishery will be accounted for as commercial halibut IFQ harvest.

Except for authorizing commercial halibut QS holders to transfer IFQ as GAF to charter halibut permit holders, the CSP does not change the management of the commercial halibut fisheries in Area 2C and Area 3A. The directed commercial halibut fisheries in Area 2C and Area 3A are managed under the IFQ Program pursuant to regulations at 50 CFR 679 subparts A through E. This rule amends only sections of the IFQ Program's regulations to authorize transfers between IFQ and GAF and establish the requirements for using GAF.

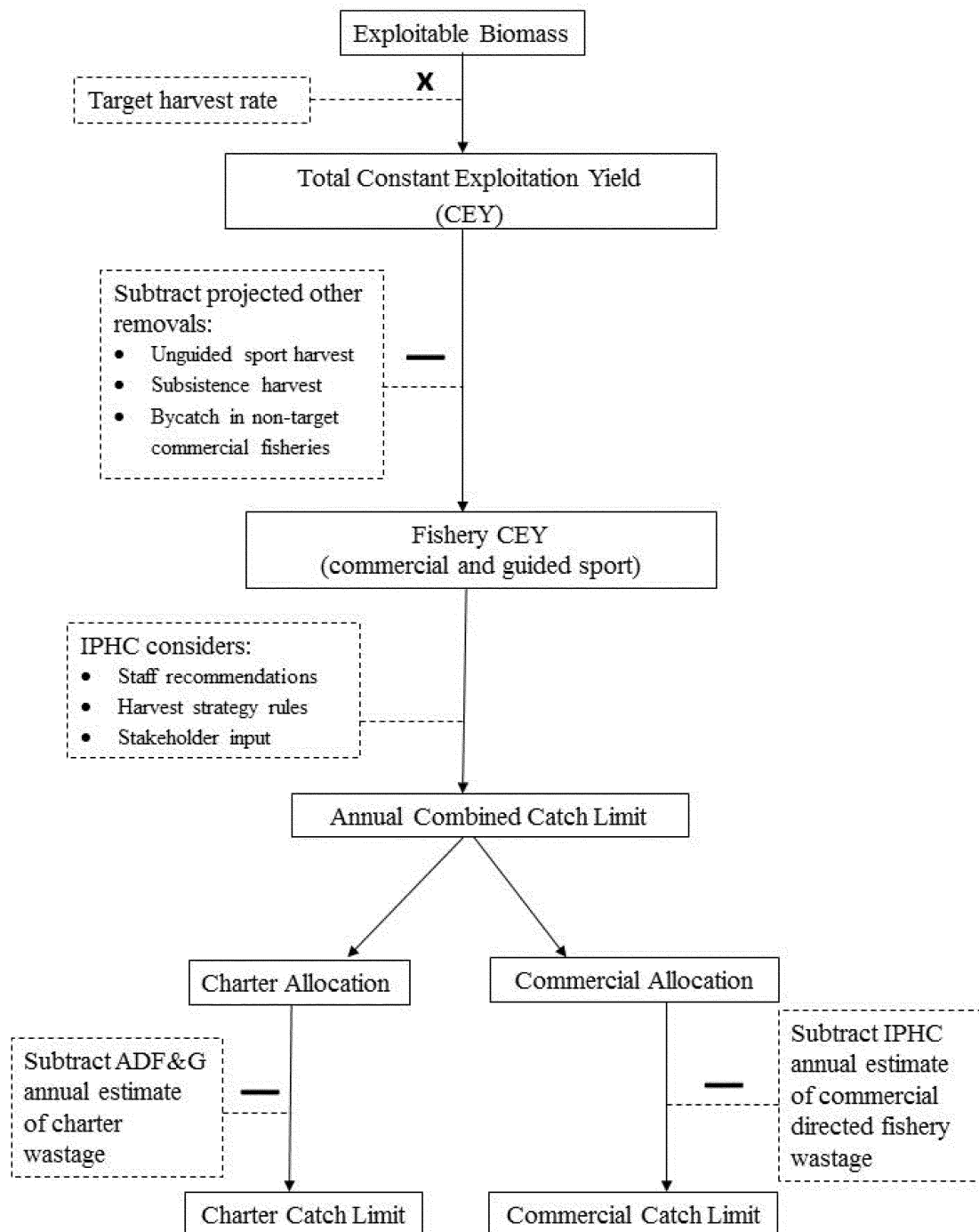
#### *C. Specification of the Annual Combined Catch Limits*

Under the CSP, the IPHC is expected to specify an annual combined catch limit for Area 2C and for Area 3A at its annual meeting in January. Each area's annual combined catch limit in net pounds will be the total allowable halibut harvest for the directed commercial halibut fishery plus the total allowable halibut harvest for the charter halibut fishery under the CSP.

The IPHC process for determining the annual combined catch limit under the CSP will be similar to the process it has typically used in the past for determining annual commercial catch limits. A notable exception is how each fishery's wastage will be deducted from the combined catch limit (described further below). This process was explained in detail in the proposed rule and in Figure 1 below.

**BILLING CODE 3510-22-P**

Figure 1. Process for Setting Annual Combined Catch Limits, Charter and Commercial Allocations, and Charter and Commercial Catch Limits for Area 2C and Area 3A Under the Catch Sharing Plan



*D. Calculation of Annual Commercial Fishery and Charter Fishery Allocations and Catch Limits*

The CSP contemplates that the IPHC will divide the annual combined catch

limits (CCLs) into separate annual catch limits for the commercial and charter halibut fisheries pursuant to the CSP's allocation formulas. The IPHC will multiply the CSP allocation percentages for each area by the annual CCL to

calculate the commercial and charter halibut allocations in net pounds. Fishery-specific catch limits will be calculated by deducting separate estimates of wastage from the commercial and charter halibut

allocations, as described in the following section. NMFS will publish the CCLs and associated allocations for the charter and commercial halibut fisheries in the **Federal Register** as part of the IPHC annual management measures pursuant to 50 CFR 300.62.

This is similar to the process by which the IPHC allocates its combined catch limit for halibut for Areas 4C–4D–4E among each of those three subareas pursuant to the Council's Area 4 Catch Sharing Plan (<http://alaskafisheries.noaa.gov/npfmc/>

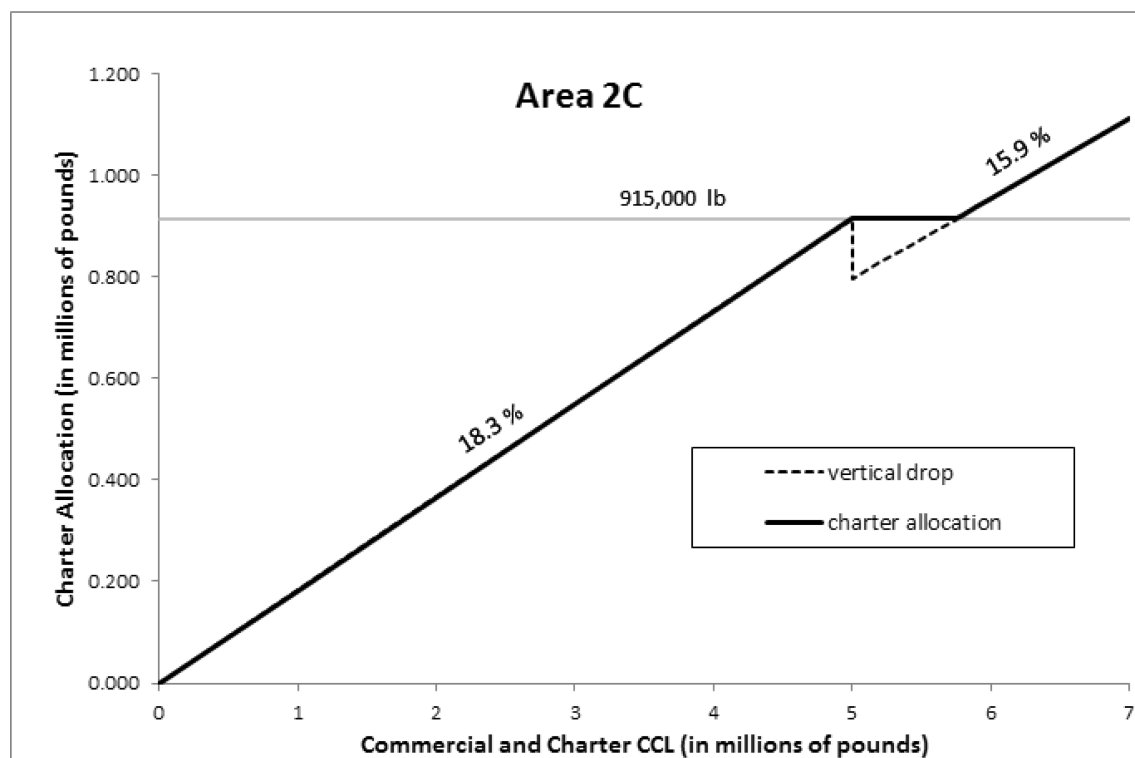
*PDFdocuments/halibut/Area4CSP605.pdf*).

The CSP establishes three allocation tiers for Area 2C as shown in Table 1 and Figure 2 below.

TABLE 1—AREA 2C CATCH SHARING PLAN (CSP) ALLOCATIONS TO THE CHARTER AND COMMERCIAL HALIBUT FISHERIES RELATIVE TO THE ANNUAL COMBINED CATCH LIMIT (CCL)

Area 2C annual combined catch limit for halibut in net pounds (lb)	Charter halibut fishery CSP allocation (% of annual combined catch limit)	Commercial halibut fishery CSP allocation (% of annual combined catch limit)
0 to 4,999,999 lb .....	18.3% .....	81.7%.
5,000,000 to 5,755,000 lb .....	915,000 lb .....	Area 2C CCL minus 915,000 lb.
5,755,001 lb and up .....	15.9% .....	84.1%.

Figure 2. Area 2C Charter Allocations at Varying Levels of the Annual Combined Catch Limit (CCL)



When the IPHC sets an annual CCL of less than 5,000,000 lb (2,268 mt) in Area 2C, the commercial halibut fishery allocation will be 81.7 percent and the charter halibut fishery allocation will be 18.3 percent of the annual CCL. When the IPHC sets the annual CCLs at the second tier, between 5,000,000 lb and 5,755,000 lb (2,610.4 mt), the allocation to the charter halibut fishery will be a

fixed 915,000 lb (405 mt), to smooth the vertical drop in the poundage allocation that would occur without this adjustment. The rationale for this fixed poundage adjustment is described in the preamble to the proposed rule on page 39131. The commercial halibut fishery will be allocated the Area 2C CCL minus the 915,000 lb fixed allocation to the charter halibut fishery. When the IPHC

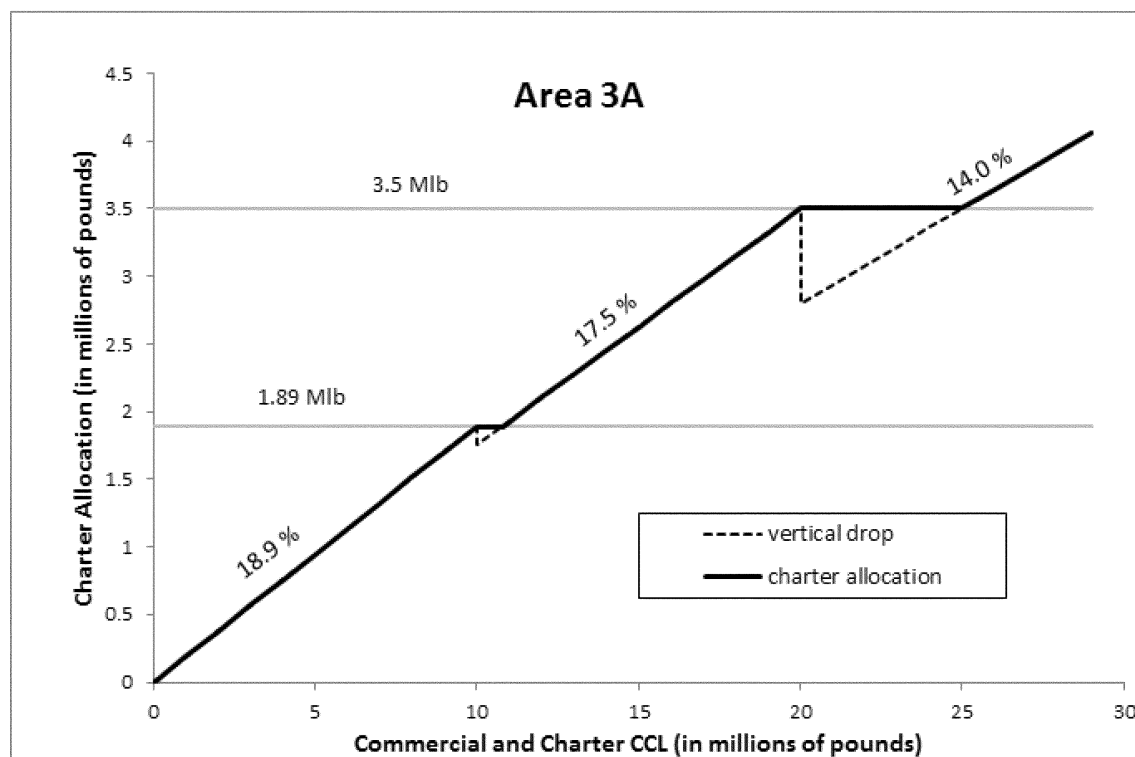
sets the annual CCL at the third tier, greater than 5,755,000 lb (2,610.4 mt), in Area 2C, the commercial halibut fishery allocation will be 84.1 percent and the charter halibut fishery allocation will be 15.9 percent of the Area 2C annual CCL.

The CSP establishes five allocation tiers in Area 3A as shown in Table 2 and Figure 3 below.

TABLE 2—AREA 3A CATCH SHARING PLAN (CSP) ALLOCATIONS TO THE CHARTER AND COMMERCIAL HALIBUT FISHERIES RELATIVE TO THE ANNUAL COMBINED CATCH LIMIT (CCL)

Area 3A annual combined catch limit for halibut in net pounds (lb)	Charter halibut fishery CSP allocation (% of annual combined catch limit)	Commercial halibut fishery CSP allocation (% of annual combined catch limit)
0 to 9,999,999 lb	18.9%	81.1%.
10,000,000 to 10,800,000 lb	1,890,000 lb	Area 3A CCL minus 1,890,000 lb.
10,800,001 to 20,000,000 lb	17.5%	82.5%.
20,000,001 to 25,000,000 lb	3,500,000 lb	Area 3A CCL minus 3,500,000 lb.
25,000,001 lb and up	14.0%	86.0%.

Figure 3. Area 3A Charter Allocations at Varying Levels of the Annual Combined Catch Limit



For Area 3A, when the IPHC sets the annual CCLs at the first tier, less than 10,000,000 lb (4,535.9 mt), the commercial halibut fishery allocation will be 81.1 percent and the charter halibut fishery allocation will be 18.9 percent of the Area 3A annual CCL. For Area 3A annual CCLs between 10,000,000 lb and 10,800,000 lb (4,898.8 mt), the allocation to the charter halibut fishery will be 1,890,000 lb (857.3 mt). The commercial halibut fishery will be allocated the Area 3A CCL minus the 1,890,000 lb fixed allocation to the charter halibut fishery. When the CCL is greater than 10,800,000 lb and less than 20,000,000 lb, the commercial halibut fishery will be allocated 82.5 percent and the charter fishery will be allocated 17.5 percent. When the CCL for Area 3A

is set at greater than 20,000,000 lb and less than or equal to 25,000,000 lb (11,339.8 mt), the charter halibut fishery will receive a fixed 3,500,000 lb allocation. The commercial halibut fishery allocation will equal the CCL minus 3,500,000 lb. Finally, at CCLs greater than 25,000,000 lb, the commercial halibut fishery allocation will be 86 percent and the charter halibut fishery allocation will be 14 percent of the Area 3A annual CCL.

Under the CSP, the commercial and charter halibut fisheries are separately accountable for their discard mortality or “wastage,” such that each fishery’s wastage will be deducted from its respective allocation to obtain its catch limit (see Figure 1).

#### E. Annual Process for Setting Charter Management Measures

Charter halibut annual management measures in Area 2C and 3A will be set according to the annual process described in the proposed rule for this action. In short, each year the Council will review an analysis of potential charter management measures for the Area 2C and Area 3A charter halibut fisheries for the upcoming fishing year. This will allow the Council and public to engage in a transparent process for considering both stakeholder input and the most current information regarding the charter fishery and its management. After reviewing the analysis and considering public testimony, the Council will identify the charter halibut

management measures to recommend to the IPHC that will most likely constrain charter halibut harvest for each area within its allocation, while considering impacts on charter operations. The IPHC will consider the Council recommendations and input from its stakeholders and staff and then will adopt either the Council's recommendation or alternative charter halibut management measures designed to keep charter harvest in Area 2C and Area 3A to the allocations specified by this final rule. These measures will be necessary to limit the combined commercial and charter harvest in Area 2C and 3A within each area's combined catch limit. NMFS will publish in the **Federal Register** the charter halibut management measures for each area as part of the IPHC annual management measures accepted by the Secretary of State with the concurrence of the Secretary of Commerce.

The Council, its Scientific and Statistical Committee, the IPHC, and NMFS will continue to assess effectiveness of this method of recommending and implementing charter management measures after the CSP is implemented.

Two restrictions are removed from Federal regulations: the one-fish daily bag limit for Area 2C at § 300.65(d)(2)(i); and the line limit at § 300.65(d)(2)(iii). Instead, daily charter halibut fishery bag limits will be established in the IPHC annual management measures.

#### *F. Other Restrictions Under the CSP*

NMFS is implementing five additional restrictions under the CSP. First, the prohibition on retention of halibut by skipper and crew on a charter vessel fishing trip in Area 2C is extended to also include Area 3A. Second, individuals who hold both a charter halibut permit and commercial halibut IFQ will be prohibited from fishing for commercial and charter halibut on the same vessel during the same day in Area 2C and Area 3A. Third, individuals who hold both a charter halibut permit and a Subsistence Halibut Registration Certificate will be prohibited from using both permits to harvest halibut on the same vessel during the same day in Area 2C and Area 3A. Fourth, charter vessel operators will be required to indicate the date of a charter vessel fishing trip in the saltwater charter logbook and to complete all of the required fields in the logbook before the halibut are offloaded. And finally, the logbook signature requirement for charter anglers in Area 2C will be extended to include charter anglers in Area 3A.

#### *G. Guided Angler Fish (GAF)*

The CSP authorizes supplemental individual transfers of commercial halibut IFQ as GAF to qualified charter halibut permit holders for harvest by charter vessel anglers in Areas 2C and 3A. Using GAF, qualified charter halibut permit holders may offer charter vessel anglers the opportunity to retain halibut up to the limit for unguided anglers when the charter management measure in place limits charter vessel anglers to a more restrictive harvest limit.

An IFQ holder is eligible to transfer halibut IFQ as GAF if he or she holds at least one unit of halibut QS and has received an annual IFQ permit authorizing harvest of IFQ in either the Area 2C and Area 3A commercial halibut fishery. A charter halibut permit holder is eligible to receive IFQ as GAF if he or she holds one or more charter halibut permits in the management area that corresponds to the IFQ permit area from which the IFQ would be transferred. Holders of military charter halibut permits and Community Quota Entities holding community charter halibut permits will also be eligible to receive IFQ as GAF. No changes to the eligibility criteria were made from the proposed rule.

For transfers between IFQ and GAF, the IFQ holder and charter halibut permit holder receiving GAF will be required to submit an application to NMFS. Application forms and instructions will be available on the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

NMFS will issue GAF in numbers of halibut. NMFS will post the conversion from IFQ pounds to a GAF for Area 2C and Area 3A for each fishing year on the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>. NMFS will post the conversion factor for the current fishing year before the beginning of the commercial halibut fishing season each year. The methods for calculating the conversion factors were described in the preamble to the proposed rule and are not repeated here.

Upon completion of the transfer between IFQ and GAF, NMFS will issue a GAF permit to the holder of a charter halibut permit. The GAF permit will be assigned to the charter halibut permit specified by the GAF permit holder at the time of application. The GAF permit holder may offer GAF for harvest by charter vessel anglers on board the vessel on which the operator's GAF permit and the assigned charter halibut permit are used.

Charter operators will be required to possess GAF in their GAF permit accounts prior to allowing charter vessel

anglers to retain halibut as GAF.

Transfers cannot occur after the fish have been caught. The GAF permit holder also will be required to have the GAF permit and the assigned charter halibut permit on board the vessel on which charter vessel anglers retain GAF, and to present the permits if requested by an authorized enforcement officer. GAF permit holders will be required to retain all GAF permits and GAF permit logs for two years after the date of issuance and to make them available for inspection upon request of an authorized enforcement officer.

NMFS will issue a revised GAF permit to the GAF permit holder each time during the year that it approves a transfer between IFQ and GAF for that GAF permit. Each GAF permit will be assigned to only one charter halibut permit in Area 2C or Area 3A, specified on the application for transfer between IFQ and GAF. That assignment cannot be changed during the year. Once GAF is transferred to a charter halibut permit holder and assigned to a specified charter halibut permit, it may not be transferred to another charter halibut permit holder.

Unused GAF may be returned to the IFQ holder by two methods: a voluntary return that can be requested in August and that will be completed on or after September 1, and an automatic return 15 days before the end of the commercial halibut fishing season. On and after the automatic return date, unused GAF will no longer be authorized for use in the charter fishery in the current year. Applications for transfer of IFQ to GAF will not be accepted during the one month prior to the automatic return date, to ensure that all GAF transactions are completed before the automatic return date. No application is required for the automatic return of unused GAF. NMFS will return any remaining unharvested GAF to the IFQ holder from whom it was derived. On or as soon as possible after the voluntary or automatic GAF return dates, NMFS will convert GAF in number of fish to IFQ in net pounds using the conversion factor for that year and return the converted IFQ to the IFQ holder's account.

This rule includes three restrictions on GAF transfers. First, IFQ holders in Area 2C will be limited to transferring up to 1,500 lb (680.4 kg) or 10 percent, whichever is greater, of their initially issued annual halibut IFQ for use as GAF. In Area 3A, IFQ holders may transfer up to 1,500 lb or 15 percent, whichever is greater, of their initially issued annual halibut IFQ for use as GAF. Second, no more than a total of 400 GAF will be assigned during one

year to a GAF permit assigned to a charter halibut permit that is endorsed for six or fewer anglers. And third, no more than a total of 600 GAF will be assigned during one year to a GAF permit assigned to a charter halibut permit endorsed for more than six anglers. This rule does not limit the amount of GAF transfers for military charter halibut permits. Community Quota Entities (CQEs) that hold quota share are allowed to transfer IFQ as GAF. The limits on these transfers depend on whether the GAF permit holder is a CQE, an eligible community resident, or a non-resident. GAF transfer restrictions were described in more detail on pages 39140–39141 of the proposed rule for this action and are not repeated here.

This rule implements new recordkeeping and reporting requirements for GAF in the ADF&G saltwater charter logbooks, in addition to saltwater charter logbook reporting requirements currently specified at § 300.65(d). The ADF&G saltwater charter logbook will continue to be used as the primary reporting method for operators in the charter halibut fishery. The person to whom ADF&G issued a saltwater charter logbook is required to retain and make available for inspection by authorized enforcement personnel the completed original logbooks for two years following the charter vessel fishing trip. This rule also will require GAF permit holders to record information on the GAF permit; separately report retained GAF by 11:59 p.m. (Alaska local time) on the last day of the fishing trip in which GAF were retained using a NMFS-approved electronic reporting system; record the electronic reporting confirmation number on the GAF permit log; and retain the GAF permits and GAF permit logs for two years.

Charter guides will be required to mark retained GAF by removing the tips of the upper and lower lobes of the caudal (tail) fin. Additionally, the charter vessel guide will be required to retain the carcass showing caudal fin clips until the halibut fillets are offloaded so that enforcement can verify the length and that the fish was retained as GAF. For each halibut retained as GAF, charter vessel guides will immediately record on the GAF permit log the date and total halibut length in inches.

GAF permit holders landing GAF on private property will be required to allow enforcement personnel access to the point of landing.

Commercial IFQ holders will be responsible for all cost recovery fees on IFQ equivalent pounds harvested for

their IFQ permit(s) and also for net pounds transferred and harvested as GAF that originated from their IFQ account(s). NMFS will levy IFQ cost recovery fees on all net pounds of halibut harvested as IFQ in the commercial fishery and as GAF in the charter fishery. Cost recovery fees for GAF were discussed in further detail in the proposed rule for this action and are not repeated here.

### III. Other Regulatory Changes

This action makes four additional regulatory changes that were explained in detail in the preamble to the proposed rule. These are minor changes that clarify existing regulations, but do not substantively change how the halibut fishery is managed. The first change clarifies the regulations to describe the current process by which the IPHC Area 4 catch sharing plan is promulgated in § 300.65(b). The second change updates instructions in regulations at § 679.5(l)(7) for Registered Buyers to complete and submit the IFQ Registered Buyer Ex-vessel Value and Volume Report form. The third change clarifies regulations at § 679.40 to describe the separate processes for allocating halibut IFQ and sablefish IFQ, and clarifies that commercial halibut fishery overage adjustments from the previous year will be subtracted from a person's IFQ, and commercial halibut fishery underage adjustments from the previous year will be added to a person's IFQ. The fourth change revises regulations at § 679.45(a)(4) to update instructions for IFQ permit holders for submitting cost recovery fee payments to NMFS and update the fee payment form and instructions to incorporate GAF in the calculation of an IFQ permit holder's cost recovery fee liability. NMFS received no comments on these changes.

### IV. Changes From the Proposed Rule

This action was proposed and public comments were solicited for 45 days beginning on June 28, 2013 (78 FR 39122), and ending on August 12, 2013. At public request, a 14-day extension of the comment period was granted prior to the end of the public comment period (78 FR 44920, July 25, 2013). The extended public comment period ended on August 26, 2013. By the end of the public comment period, 4,740 submissions were received. Unique issues raised in those comments received by the end of the comment period are summarized and responded to below under the heading “V. Comments and Responses.” The following 21 changes are made from the proposed rule in this final rule. Changes

3, 8 through 10, 12 through 14, 16, 18, 19, and 21 below were made in response to public comments. The remainder of the changes correct incorrect cross-references to other paragraphs or make minor clarifications to the text.

#### *Definitions § 300.61*

1. In developing the final rule, NMFS noted that six definitions pertaining to the charter halibut fishery contained an incorrect cross-reference. The proposed definitions for “charter vessel angler,” “charter vessel fishing trip,” “charter vessel guide,” “charter vessel operator,” “crew member,” and “sport fishing guide services” all stated, “for purposes of §§ 300.65(d) . . .” Regulatory text implementing the CSP replaces the GHL regulatory text at § 300.65(c), so the definitions need to apply to paragraph (c) as well. NMFS changed these six definitions so they apply to all of § 300.65.

#### *Implementation § 300.65(c)(2)*

2. In the proposed rule, paragraph § 300.65(c)(2) stated that the “CSP annual allocations and guided sport catch limits are adopted by the Commission as annual management measures and published by NMFS in the **Federal Register** as required in § 300.62.” The IPHC will adopt and NMFS will publish the annual CCL, the annual commercial catch limit, and the annual guided sport catch limit, but not necessarily the CSP allocation percentages that were applied to the CCL to obtain the sector catch limits. The text of this paragraph has been revised to reflect this change.

#### *Transfer Between IFQ and GAF § 300.65(c)(5)(ii)*

3. In the proposed rule at paragraph § 300.65(c)(5)(ii)(B)(2), NMFS proposed October 15 as the last day that applications could be submitted to transfer IFQ to GAF. Two commenters noted that the GAF automatic return date is 15 days before the close of the commercial fishing season, which varies annually. In some years, the commercial fishery closes in early November. In those years, a GAF permit holder requesting a transfer of IFQ to GAF near the proposed deadline of October 15 may not have enough time to harvest that GAF before the automatic return date. NMFS agrees with the comment and has changed the deadline for transfer applications to one month prior to the closing date of the commercial fishery so the application deadline will adjust with the season dates. This change will ensure that GAF permit holders will have a minimum of two



weeks to harvest their GAF before the automatic return date.

4. NMFS proposed regulations at § 300.65(c)(5)(ii)(D)(4)(iv) requiring a CQE to submit a complete annual report to NMFS as specified in § 679.5(l)(8) to receive GAF by transfer. NMFS published a final rule on June 4, 2013 (78 FR 33243), to consolidate reporting regulations and specify additional requirements for a CQE to submit a complete annual report at § 679.5(t). NMFS has revised this final rule at § 300.65(c)(5)(ii)(D)(4)(iv) to cross-reference the revised CQE reporting requirements at § 679.5(t).

5. Paragraph § 300.65(c)(5)(ii)(E)(2) of the proposed rule stated, "If no GAF were harvested in a year, the conversion factor would be calculated using the same method as for the first calendar year after the effective date of this rule." NMFS changed the word "would" to "will" in this sentence to read, "If no GAF were harvested in a year, the conversion factor will be calculated . . ." This change is to clarify that this process will occur and is not discretionary.

#### *Guided Angler Fish Permit § 300.65(c)(5)(iii)*

6. NMFS has changed the wording of paragraph § 300.65(c)(5)(iii)(A)(7) describing GAF permit retention requirements. The proposed requirement states, "GAF permit holders must retain GAF permit(s) for two years after the end of the fishing year . . ." The back of the GAF permit contains the "GAF permit log" where guides must record dates, lengths, and electronic reporting confirmation numbers for harvested GAF. GAF transfer limits allow up to 600 GAF to be transferred to a charter halibut permit (CHP) on a GAF permit. The GAF permit log on the back of the permit may not have sufficient room to record all of the GAF harvested under that GAF permit. Supplemental GAF permit log pages will be available to download from the NMFS Web site at <http://alaskafisheries.noaa.gov/>. NMFS changed the wording of this requirement to specify that all GAF permits and all associated GAF permit logs must be retained for two years after the end of the fishing year.

#### *GAF Use Restrictions § 300.65(c)(5)(iv)*

7. On page 39142 of the proposed rule, NMFS stated that in addition to clipping the tails of retained GAF, the charter vessel guide would be required to "retain the carcass showing caudal fin clips until the halibut filets were offloaded so that enforcement could verify the length and that the fish was

retained as GAF." The requirement to mark GAF by clipping the tail fin was proposed at § 300.65(c)(5)(iv)(G), but this paragraph did not specify the carcass retention requirement. Paragraph (G) has been revised to reflect this requirement.

8. The Council did not specify, and NMFS did not propose, GAF transfer limits for military charter halibut permits. NMFS received a comment that, to avoid confusion, the regulatory text at § 300.65(c)(5)(iv)(H) should explicitly state that the GAF transfer limits do not apply to military charter halibut permits. NMFS agrees and has changed the text accordingly.

#### *Retention and Inspection of Logbook Requirements § 300.65(d)(2)*

9. The proposed logbook retention requirement at § 300.65(d)(2) proposed a number of requirements that would have applied to "the person to whom the Alaska Department of Fish and Game issues the Saltwater Sport Fishing Charter Trip Logbook and who retains halibut." Comments received from ADF&G noted that anyone can be issued a logbook that is assigned to a business for use on a particular vessel and ADF&G does not record the name of the person to which the logbook is issued. ADF&G assumed that NMFS was proposing to impose the requirements of § 300.65(d) to owners of the business to which a logbook is assigned, and suggested the language should be clarified as such. NMFS agrees with this comment and has changed § 300.65(d)(1) and (2) to impose the requirements to any "person whose business was assigned an Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook." Second, ADF&G noted that charter vessel anglers are the persons who retain halibut. Businesses, guides, and deckhands are prohibited from retaining halibut under the CSP; therefore, the phrase "and who retains halibut" in § 300.65(d)(2) should actually refer to charter vessel anglers who retain halibut. NMFS agrees with this comment and has changed § 300.65(d)(2) clarify that the requirements apply to any "person who is required to provide information pursuant to paragraph (d)(4) of this section, or whose business was assigned an Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook and whose charter vessel anglers retain halibut."

10. Proposed paragraph § 300.65(d)(2)(i) stated that a person whose business was assigned a saltwater charter logbook must "retain the logbook for 2 years after the end of the

fishing year for which the logbook was issued . . ." A comment from ADF&G noted that because data pages may be removed from a logbook, the language should be clarified to ensure that halibut logbook data pages are retained during the specified period. NMFS agrees and has revised paragraph (i) as suggested to read, "Retain all logbook data pages showing halibut harvest for 2 years after the end of the fishing year for which the logbook was issued . . ."

#### *Recordkeeping and Reporting Requirements § 300.65(d)(4)*

11. NMFS proposed general recordkeeping and reporting requirements at § 300.65(d)(4)(i). These instructions contained an incorrect cross-reference to paragraph (d)(4)(ii)(C) for an exception from the recordkeeping and reporting requirements. NMFS has corrected the cross-reference to paragraph (d)(4)(iii)(C) in this final rule.

12. NMFS' proposed instructions for completing the saltwater charter logbook at § 300.65(d)(4)(ii)(B)(5) would have required that charter vessel guides record the six-digit statistical area code in which halibut were caught and retained. A comment from ADF&G noted that in the Kodiak management area, ADF&G requires charter guides to record five-digit salmon statistical areas when targeting salmon, even if halibut are caught incidentally and retained. ADF&G suggested removing the words "six-digit" so the instruction could apply to either type of statistical area, as necessary. NMFS agrees and has made the requested change. ADF&G will also update the instructions printed in the saltwater charter logbook to reflect this change.

13. ADF&G noted a typographical error in proposed paragraph § 300.65(d)(4)(ii)(B)(6). The proposed first sentence of that paragraph read, "Before a charter vessel fishing trip begins, record for the first and last name of each paying or non-paying charter vessel angler . . ." NMFS has removed the word "for" from this sentence.

14. In response to a comment from ADF&G, NMFS changed language under GAF reporting requirements at § 300.65(d)(4)(iii)(A)(1) to specify where on the GAF permit the date and GAF length must be recorded. The proposed language stated only that the required information must be recorded on the GAF permit. The revised language clarifies that the required information must be recorded "on the GAF permit log (on the back of the GAF permit) . . ." NMFS noted the need for this change after the proposed rule was published as NMFS developed the GAF permit and

GAF permit log for implementation of this final rule.

15. NMFS has made minor changes to the introductory text for GAF electronic reporting at § 300.65(d)(4)(iii)(D). The proposed paragraph would have required the GAF permit holder to electronically report specific information “for each GAF retained.” Since the proposed rule was published, NMFS has further developed the GAF electronic reporting system such that most of the data elements in the following paragraphs (1) through (9) will need to be entered only once for each fishing trip, rather than for each GAF retained. This change reduces the reporting burden for charter vessel guides. The introductory text in paragraph (D) has been changed accordingly.

16. In response to a comment, NMFS is adding a requirement to record the date GAF were caught and retained to the electronic reporting data elements for GAF at § 300.65(d)(4)(iii)(D). When preparing the proposed rule, NMFS anticipated that because electronic reports are due by 11:59 p.m. on the day a charter vessel angler retains GAF, the date could be automatically filled by the online reporting system as the same date that the data were reported. NMFS received a comment noting that for multi-day trips, the GAF permit holder is not required to submit the electronic report until 11:59 p.m. on the last day of the charter vessel fishing trip. In the case of multi-day trips, GAF permit holders may report GAF harvested on more than one day and corresponding to multiple pages in the ADF&G saltwater charter logbook in a single electronic report. Therefore, for proper accounting and to facilitate enforcement, NMFS must require GAF permit holders to also enter the date. NMFS agrees with the comment, so the date requirement was added as paragraph (d)(4)(iii)(D)(5) and subsequent paragraphs were renumbered.

17. The proposed rule at § 300.65(d)(4)(iii)(D)(6) would have required that charter vessel guides report the “length of GAF caught and retained” in the electronic report. NMFS has reworded this requirement to clarify that guides must report the “length of each GAF caught and retained.” NMFS has also renumbered this paragraph as (d)(4)(iii)(D)(7).

18. NMFS reworded paragraph § 300.65(d)(4)(iii)(E)(1) under GAF reporting requirements in response to a public comment that it was not clear who was responsible for compliance with this requirement. The reworded paragraph specifies that the GAF permit holder is responsible for ensuring that

all GAF harvested on board a vessel are debited from the GAF permit holder’s account under which the GAF were retained.

19. The paragraph at § 300.65(d)(4)(iii)(E)(2) under proposed GAF reporting requirements was reworded in response to a public comment to specify where the GAF electronic reporting confirmation number should be recorded and by whom. The reworded paragraph specifies that the GAF electronic confirmation number shall be recorded on the GAF permit log by the GAF permit holder.

20. Based on the public comment resulting in changes 17 and 18 above, NMFS further clarified the instructions for a properly reported GAF landing by adding paragraph § 300.65(d)(4)(iii)(E)(3). This paragraph provides a cross-reference to paragraph (d)(4)(iii)(A)(4), which describes how to correct a submitted GAF landing electronic report.

#### *Prohibitions § 300.66*

21. On page 39136 of the proposed rule, NMFS discussed the Council’s intent to prohibit individuals who hold both a charter halibut permit and commercial halibut IFQ from fishing for commercial and charter halibut on the same vessel during the same day in Area 2C and 3A. Consistent with the recommendation, NMFS proposed prohibiting individuals who hold both a charter halibut permit and a Subsistence Halibut Registration Certificate from using both permits to harvest halibut on the same vessel during the same day in Area 2C and Area 3A. NMFS intended to include both of these prohibitions at § 300.66(h). NMFS received a comment noting that the prohibition at paragraph (h) was incorrect and only prohibited subsistence and commercial fishing for halibut on the same vessel during the same day. NMFS agrees with the comment and has corrected paragraph (h) to prohibit, with some exceptions, individuals from conducting subsistence fishing for halibut while commercial fishing or sport fishing for halibut, as defined in § 300.61, from the same vessel on the same calendar day.

#### **V. Comments and Responses**

The proposed rule for this action was published on June 28, 2013 (78 FR 39122), and public comments on it were accepted until August 26, 2013. NMFS received approximately 4,740 comment submissions raising 153 unique issues within the scope of this action. Comments that resulted in changes from the proposed rule were addressed in the previous section. The remaining

comments were reviewed, organized into nine topical categories, and responded to as follows:

#### *Allocation*

*Comment 1:* The CSP allocations to the charter sector would result in catch limits that are lower than the GHl at current halibut stock levels. This change to the allocation is unjustified.

*Response:* NMFS disagrees that the change is unjustified. One of the objectives of the CSP is to establish Area 2C and Area 3A sector allocations that balance the differing needs of the charter and commercial sectors over a wide range of halibut abundance, and that increase or decrease (“float”) with varying levels of halibut abundance. To accomplish this objective, the Council and NMFS replaced the GHl with sector allocations that vary directly with halibut abundance. A fixed percentage of the annual CCL will be allocated to each sector across a wide range of potential CCLs. The allocation to each sector will vary with halibut abundance, with higher allocations inuring to the charter halibut fishery at lower levels of abundance. A detailed description of the allocations to the charter sector under the CSP is included in the proposed rule and in the Analysis. The Council determined that use of a fixed percentage allocation of the CCL to each fishery under the CSP will result in both the commercial and charter halibut fishery allocations adjusting directly up and down more directly proportionate to changes in halibut abundance.

As described in section 1.1.1 of the Analysis and in the proposed rule for this action, the GHl is not as directly responsive as the CSP to changes in halibut abundance. Fixed GHls for Areas 2C and 3A were established annually, in pounds, and did not fluctuate directly with halibut stock abundance, while commercial catch limits do fluctuate directly with stock abundance. The GHl has five poundage levels in relation to the allowable removals of halibut from all sources (Total CEY). The GHls were reduced if the area-specific Total CEY declined by at least 15 percent below the average 1999 through 2000 Total CEY, as determined by the IPHC. For example, if the Total CEY in Area 2C fell by between 15 percent and 24 percent below its 1999 through 2000 average, then the GHl would have been reduced from 1,432,000 lb to 1,217,000 lb. If the Total CEY declined by between 25 percent and 34 percent, then the GHl would have been reduced from 1,432,000 lb to 1,074,000 lb. If the Total CEY continued to decline by at least 10 percent, the GHl would have been

reduced from 1,074,000 lb by an additional 10 percent to 931,000 lb. If the Total CEY declined by an additional 10 percent or more, the GHL would have been reduced by an additional 10 percent from 931,000 lb to the baseline level of 788,000 lb. The Area 2C GHL would not be reduced below 788,000 lb. If the Area halibut biomass increased, the GHL could be increased only to its initial level of 1,432,000 lb, but no higher.

The proposed rule describes the effects of the GHL in the Area 2C and Area 3A charter halibut fisheries in circumstances when Total CEY declines did not trigger a GHL reduction. During some years of declining Total CEY under the GHL, the commercial halibut fishery IFQ allocations were reduced, but there was no change in the charter halibut fishery GHLs. Conversely, in years when the Total CEY increased, the GHL did not allow the charter halibut fishery to fully benefit from this increase.

Section 2.5.10 of the Analysis describes that under the GHL program, the proportion of total halibut harvested in the Area 2C and Area 3A commercial halibut fishery has declined and the proportion harvested in the charter halibut fishery has increased. From 2008 through 2012, the Area 2C commercial halibut fishery harvest declined from 60.2 percent to 43.1 percent of the Total CEY, and charter halibut fishery harvest increased from 14.3 percent to 15.9 percent of the Total CEY over the same time period. In Area 3A, commercial halibut fishery harvest decreased from 76.8 percent to 60.3 percent of the Total CEY, and charter halibut fishery harvest increased from 12.6 percent to 15.7 percent of the Total CEY from 2008 through 2012. Thus, while both the GHL and commercial halibut fishery catch limits have declined in recent years, the commercial halibut fisheries have borne larger poundage and proportional reductions under the current allocation system. This resulted in negative economic impacts on commercial halibut fishery participants from reduced catch limits, which contributed to the instability and conflict between user groups that the Council intended to address with the CSP.

It is true that at moderate to low levels of halibut abundance, the CSP would provide the charter halibut fishery with a smaller poundage allocation than the guideline limits established under the GHL program. The Council and NMFS took this into consideration in its evaluation of the CSP and the GHL. Section 2.5 of the Analysis shows that at CCLs of less than 9.5 million lb in

Area 2C and 26 million lb in Area 3A, the CSP poundage allocation to the charter sector would be lower than the GHL. Conversely, at CCLs of greater than 9.5 million lb in Area 2C and 26 million lb in Area 3A, the CSP would provide the charter halibut fishery with a larger poundage allocation than the guideline limits established under the GHL program. The Council and NMFS considered the differences in the estimated CSP poundage allocations compared to the GHL for recent years. Section 2.8 of the Analysis estimates that if the CSP had been in place in recent years, the charter sector poundage allocation likely would have been less than the GHL from 2008 through 2012 in Area 2C and from 2009 through 2012 in Area 3A.

Moreover, the Council and NMFS have taken into account the capability of vessels used in the commercial and charter fisheries for halibut to engage in other fisheries and economic endeavors. The charter halibut industry provides marine transportation and sport fishing guide services to anglers wishing to catch halibut. Charter vessel businesses provide these services also to anglers wishing to catch salmon, rockfish, lingcod, and other bottomfish. In addition, charter vessel businesses in Areas 2C and 3A may provide marine transportation for bird watching, whale watching, and general sightseeing. Passengers using these services may be independent tourists, guests at lodges, or travelers on cruise ships. Charter vessel businesses may focus their business plan on sport anglers wishing to catch halibut, but other business plans are possible given the variety of reasons why an individual may want to engage the services of a charter vessel.

Having conducted a comprehensive analysis of the GHL and the CSP, the Council and NMFS have determined that the CSP allocations implemented by this final rule provide a clear, transparent, and equitable allocation between the two sectors.

*Comment 2:* In November 2009, a U.S. District Court determined that the GHL is a fair and equitable allocation (*VanValin v. Locke* (671 F. Supp 2d 1 D.D.C. 2009)). Because the CSP reduces the allocation to the charter sector from the status quo GHL, it cannot be fair and equitable. Therefore, the charter fishery should continue to be managed to its GHL allocations.

*Response:* *VanValin v. Locke* involved a legal challenge to the GHL. That case does not preclude the subsequent consideration and implementation of alternative allocations between the commercial and charter sectors that differ from the GHL. Pursuant to section

773c(c) of the Halibut Act, where the Council develops regulations that allocate halibut fishing privileges among United States fishermen, such allocation “must be fair and equitable to all fishermen.” This language is adopted directly from National Standard 4 of the Magnuson-Stevens Act (16 U.S.C. 1851(a)(4)). The terms “fairness and equity” have been interpreted in NOAA Fisheries’ National Standard Guidelines (the Guidelines) (see 50 CFR 600.325(c)(3)(i)(A)). The Guidelines provide that there should be a rational relationship between an allocation of fishing privileges and the furtherance of a legitimate fishery management objective. The Guidelines further provide that “inherent in an allocation is the advantaging of one group to the detriment of another.” The Council may develop, and the Secretary of Commerce may implement, regulations allocating fishing privileges that result in hardship to one group if such burdens are outweighed by the total benefits received by another group. “An allocation need not preserve the status quo in the fishery to qualify as ‘fair and equitable,’ if a restructuring of fishing privileges would maximize overall benefits” (see 50 CFR 600.325(c)(3)(i)(B)).

The CSP allocations are fair and equitable. As described in the Analysis and in the proposed rule for this action, the Council and NMFS decided to replace the GHL with sector allocations that balance the differing needs of the charter and commercial sectors, and that float with varying levels of halibut abundance. See also the response to Comment 1. The GHL is not as responsive or adaptable to changes in halibut abundance. While both the GHL and commercial fishery catch limits have declined in recent years, the commercial halibut fisheries have borne larger poundage and proportional reductions under the current allocation system. The Council noted that the absence of a hard allocation between the commercial and the charter halibut sectors has resulted in conflicts between sectors and tensions in coastal communities dependent on the halibut resource.

The CSP allocations to the commercial and charter sectors will result in both fishery allocations adjusting directly with changes in halibut exploitable biomass. This will stabilize the proportions of harvestable halibut available to the commercial and charter fisheries at all levels of halibut abundance, allowing both the commercial and charter sectors to share in the benefits and costs of managing the halibut resource and providing a

more equitable management response to changes in halibut biomass compared to the GHL policy. Also see the response to Comment 6.

*Comment 3:* The CSP allocations to the charter sector are demonstrably fair and equitable. The Area 2C charter allocation includes as baseline years for calculating the allocation percentage two years when charter harvest exceeded the GHL, 2004 and 2005, which rewards the charter sector for exceeding the GHL. The Council chose not to use more recent years in which charter harvests were even higher in consideration of the effects on commercial halibut fishery participants. The commenter notes that in *Van Valin v. Locke* the court ruled that charter operators should not be rewarded for exceeding the GHL. The court stated that where overfishing by one group in recent years is the precise concern that the regulation intends to address, it makes sense to disregard the most recent participation data (Id. at 11). If the CSP errs at all relative to allocation equity, it errs in awarding too large a percentage of the halibut resource to the charter sector.

*Response:* NMFS acknowledges the comment and notes that the preamble to the proposed rule and section 1.6.7 of the Analysis describe the Council's rationale for recommending the CSP allocations to the commercial and charter sectors. Also see the response to Comment 26.

*Comment 4:* A court found the GHL to be fair and equitable, but that is not the only allocation that could be fair and equitable. The Council has the authority to recommend a different allocation that could also be fair and equitable.

*Response:* As described in the response to Comment 2, the Council and NMFS have articulated a legitimate objective for establishing the CSP in Area 2C and Area 3A. To accomplish this objective, the Council and NMFS properly determined to replace the GHL with sector allocations that vary directly with halibut abundance. The Secretary of Commerce has determined that this final rule is consistent with the Halibut Act requirement that allocation of fishing privileges be fair and equitable to halibut fishermen.

*Comment 5:* The proposed rule states that the problem is uncompensated reallocation of the halibut from the commercial to the charter sector. The percentage of the CCL allocated to the charter sector decreases at high levels of abundance. How are guided anglers compensated for this reallocation of fish to the commercial sector at high levels of abundance?

*Response:* NMFS disagrees with the commenter's characterization of the proposed rule. Page 39123 of the proposed rule noted that "[t]he commercial IFQ halibut fishery therefore views charter harvests in excess of established policies or goals as uncompensated reallocations of fishing privileges." This statement follows a description of the IPHC process for determining commercial catch limits under the GHL program, and was included in the proposed rule preamble to express the view of commercial halibut fishery participants that consider charter harvests in excess of established harvest policies (the GHL from 2004 through 2013), as uncompensated reallocation of halibut from the commercial to the charter sector. The purpose and need for the CSP is described in section 1.2 of the Analysis and the proposed rule (see the "III. Proposed Catch Sharing Plan (CSP) for Area 2C and Area 3A" section beginning on page 39125). The CSP also would allow the charter sector to increase its allocation by leasing IFQ from the commercial sector. The proposed sector allocations are intended to fluctuate proportionately with halibut abundance. In recommending the CSP, the Council balanced its objective to establish an allocation to the Area 2C and Area 3A commercial and charter sectors that varies proportionately with halibut abundance while maintaining this historical charter season length with no inseason changes to harvest restrictions. Also see the response to Comment 6.

NMFS agrees that under the CSP, the proportion of the CCL allocated to the charter sector at relatively higher levels of abundance is less than the proportion allocated to the charter sector at relatively lower levels of abundance. The proposed rule for CSP describes the rationale for the allocations to the commercial and charter sectors in Area 2C and Area 3A.

NMFS disagrees that the CSP allocation to the charter sector at higher levels of halibut abundance results in a reallocation of halibut to the commercial sector. As described in the proposed rule for the CSP, the Council balanced its objective to establish clear allocation to sectors that varies in proportion with halibut abundance with the needs of the charter and commercial fisheries at all levels of halibut abundance.

*Comment 6:* The Problem Statement says that the absence of a hard allocation between the longline and the charter halibut sectors has resulted in conflicts between sectors and tensions in coastal communities dependent on

the halibut resource. What is a hard allocation? Is the GHL a hard allocation? What makes the CSP allocation any more of a hard allocation than the GHL?

*Response:* NMFS interprets the Council's reference to a hard allocation in its problem statement to mean an allocation between the directed commercial halibut fishery and the charter fishery that is clear, transparent, and varies in proportion to changes in halibut abundance. The Council intended for the CSP to be a comprehensive management program for the charter halibut fisheries in Areas 2C and 3A, with sector allocations that balance the differing needs of the charter and commercial sectors over the range of halibut abundance, that float with varying levels of annual halibut abundance, and that include a public process for developing management measures intended to limit the charter sector to its allocation.

As described in the response to Comment 1, management of the charter fishery under the GHL program resulted in the commercial fishery bearing a disproportionate amount of the declines in halibut exploitable biomass relative to the charter sector. This changing proportional allocation of a fully utilized halibut resource between the sectors under the GHL program created instability between user groups that the Council sought to address with the commercial and charter sector halibut allocations implemented by this final rule. This action is intended to maintain stability, economic viability, and diversity of halibut user groups by addressing allocation conflicts between participants in the commercial and charter halibut fisheries. The Secretary of Commerce has determined that the CSP allocations are consistent with the Council's objectives as described in its problem statement and the purpose and need for the CSP described in section 1.2 of the Analysis.

*Comment 7:* The Problem Statement says that unless a mechanism for transfer between sectors is established, the existing environment of instability and conflict will continue. The Council seeks to address this instability while balancing the needs of all who depend on the halibut resource for food, sport, or livelihood. Does NMFS believe that a plan that reallocates without compensation 30 percent or more of the current allocation to commercial fishermen while allowing guided anglers to rent those same fish back is going to address the existing environment of instability and conflict? How are guided anglers compensated for this reallocation from the GHL?

*Response:* As discussed in the response to Comment 1, this final rule establishes an allocation in which both the commercial and charter halibut fisheries share in the benefits and costs of managing the resource for long-term sustainability. The Council anticipated, and NMFS agrees, that stabilizing the method of allocating halibut between the sectors will alleviate allocation conflicts between halibut user groups in Areas 2C and 3A. As described in the proposed rule for this action, the Council faced the challenge of balancing historical halibut harvests, economic impacts to the commercial and charter sectors, and the recent decline in halibut abundance in both areas as it developed its recommendation. As a result, it is not possible for any allocation consistent with the Council's objectives to make participants in both fisheries "whole" economically given current halibut abundance levels.

In recognition that allocations under the CSP to the charter sector may be constraining at current low levels of halibut abundance, the Council recommended the GAF program to meet the needs of the charter halibut fisheries in Areas 2C and 3A and provide flexibility for participants in both sectors. The GAF program was not intended to provide a mechanism to replace reductions in the charter allocation relative to current or historical harvest levels. GAF will provide a voluntary, market-based mechanism for transferring halibut allocation from the commercial sector to the charter sector in order for the charter sector to access additional halibut under a potentially constraining allocation. It provides flexibility for operators in both the commercial and charter sectors. Individual charter and commercial operators will be able to consider current halibut catch limits in relation to their operational needs when determining whether to use the GAF program. The Council and NMFS anticipate that GAF may be used by charter anglers particularly in years of low halibut abundance, when charter catch limits under the CSP may be constraining.

*Comment 8:* Optimum yield for the halibut fisheries has changed. The charter fishery harvest increased during the 1990s and early 2000s in response to shifting optimum utilization. The increased economic benefits from the charter sector and indirect support services are being ignored by the IPHC. The IPHC continues to consider the commercial fishery to be the optimal use of the resource.

*Response:* NMFS agrees that charter fishery harvest increased during the

1990s and early 2000s. The resulting reallocation of harvest from the commercial sector has resulted in conflicts between sectors and tensions in coastal communities that are dependent on the halibut resource. The Council, not the IPHC, developed the CSP to address this instability while balancing the needs of all who depend on the halibut resource for food, sport, or livelihood. Specification of optimum yield for halibut fisheries is not required by the Halibut Act and has not been determined. See *Charter Operators of Alaska v. Blank*, 11-cv-00664 (RCL) (D.D.C., February 24, 2012). As described in the response to Comment 120, the Council and NMFS considered the anticipated effects of the allocation to the charter sector at all levels of abundance as analyzed in section 2.5 of the Analysis, and the potential impacts on the charter sector in section 2.6 of the Analysis.

*Comment 9:* The commercial IFQ halibut sector perceives that charter harvests in excess of established policies or goals as uncompensated reallocations of fishing privileges from the commercial sector to the charter sector. This is the problem the CSP is intended to remedy; however, this is an erroneous objective. Pursuant to Article III of the Halibut Convention, the IPHC must develop and maintain halibut stocks to levels that will permit the optimum yield for the halibut fisheries. The harvest of halibut in Alaska occurs in three fisheries: the commercial, sport, and subsistence fisheries. The optimum yield for the sport fishery will be adversely impacted by the proposed changes. The IPHC fails in its duty to protect the current allocation if it implements the proposed changes.

*Response:* The commenter mischaracterizes the problem the Council intended to address with the CSP. The Council's problem statement provides that "[t]he absence of a hard allocation between the commercial longline and charter halibut sectors has resulted in conflicts between sectors, and tensions in coastal communities that are dependent on the halibut resource. Unless a mechanism for transfer between sectors is established, the existing environment of instability and conflict will continue. The Council seeks to address this instability, while balancing the needs of all who depend on the halibut resource for food, sport, or livelihood." The CSP addresses this problem statement by establishing allocations for both sectors that fluctuate with halibut abundance, and by establishing a mechanism to transfer halibut between the sectors (GAF).

Second, the commenter mischaracterizes Article III of the Convention. "Developing the stocks of halibut of the Northern Pacific Ocean and Bering Sea to levels which will permit the optimum yield from that fishery and . . . maintaining the stocks at those levels" does not require the IPHC to maintain a current allocation. Nothing in the Convention obligates the IPHC to maintain the GHF as the allocation between charter and commercial sectors to achieve the optimum yield from the sport sector or from any specific sector of the halibut fishery. The Council and NMFS have developed and implemented the CSP pursuant to the Halibut Act as the appropriate allocation between the commercial sector and charter sector.

*Comment 10:* The CSP does not reflect current management practices nor present participation in the fishery. For example, present participation in the commercial halibut fishery has changed significantly through a reduction in the number of quota share holders. Additionally, the Council ignored 2011 data on commercial and charter catch to favor commercial IFQ holders.

*Response:* The Council considered present and historical management and participation in the fishery when developing the CSP. The Analysis takes into account present participation in the commercial and charter halibut fisheries and considered alternative sector allocations under the CSP. Specifically, the Analysis includes information on harvests and participation in the commercial and charter halibut fisheries through 2011, the most recent year for which information was available regarding participation in the charter halibut fisheries in Areas 2C and 3A when the Council recommended its preferred alternative in October 2012. The 2011 charter fishery was the first full year in which the charter halibut limited access program was in effect in Areas 2C and 3A. As discussed in the proposed rule for this action, the charter halibut limited access program capped the number of charter businesses that could operate in Areas 2C and 3A to limit further expansion of the industry.

The Council's consideration of each sector's recent participation and halibut harvest levels were particularly important in developing its recommendation of sector allocations under the Area 2C and Area 3A CSP because halibut abundance levels have declined in those areas in recent years. The Analysis described the effects of changing the method of allocating halibut between the commercial and charter sectors under the alternatives considered by the Council. The Analysis

estimated the CSP allocations to the commercial and charter sectors that would have been specified from 2008 through 2012 if the CSP had been in place. Section 2.8 of the Analysis, which shows that the catch sharing allocations could constrain charter harvests compared to the status quo when halibut abundance is low, as it has been in recent years. However, the Council and the Secretary of Commerce also considered the disproportionate impact of halibut abundance declines on the commercial sector catch limits under the GHL program, and determined that the CSP allocations implemented by this final rule meet the management objective of establishing sector allocations that vary directly with halibut abundance while balancing the halibut needs of the commercial and charter sectors with respect to recent participation.

The Analysis also took into account historical fishing practices in and dependence on the charter halibut fisheries as it considered alternative allocations to the commercial and charter halibut fisheries for the CSP. The Analysis included information on harvests and participation in the commercial and charter halibut fisheries from 1995 through 2011. The Council's preferred alternative for allocations to the commercial and charter fishery was based on each sector's harvest as percentage of the combined commercial and charter halibut harvest for several sets of years ranging from 1995 through 2005. In considering these data, the Council also considered estimates of revenues from participation in the commercial and charter halibut fisheries to evaluate historical fishing practices in and dependence on the charter halibut fisheries for both sectors.

As described in the Analysis, fishery participation is often measured in pounds of the targeted fish species landed. Charter vessel businesses, however, primarily market a sport fishing experience rather than pounds of fish caught. Thus, while it is not possible to quantify or directly compare dependence on the halibut resource by participants in the commercial and charter halibut fisheries using available information, the Analysis presented the Council and the Secretary of Commerce with sufficient information to take into account dependence on the halibut fisheries by participants in both sectors when recommending sector allocations under the CSP. The evaluation of the potential effects of the alternatives in sections 2.5 and 2.6 of the Analysis informed the Council during its development of this action and the

Secretary of Commerce's decision to approve it.

Finally, the Council also took into account historical fishing practices in the charter halibut fisheries by continuing to avoid in-season changes to charter harvest restrictions and maintain a traditional charter halibut season length. The charter halibut fisheries have traditionally been managed with pre-season specifications of harvest restrictions without in-season adjustments or closures during the charter fishing season. The CSP recommended by the Council and approved by the Secretary of Commerce maintains this approach to managing the charter halibut fisheries in Areas 2C and 3A.

*Comment 11:* The CSP likely will promote strong industry desire for the charter sector to stay within its allocation because overages will roll over into the following season and reduce the successive season's charter catch limit.

*Response:* Halibut harvest in the Area 2C or Area 3A charter fishery that exceeds the charter allocation in any one year, also called an overage, will not be deducted from the charter allocation in the following year. The CSP allocations to the Area 2C and Area 3A commercial and charter halibut fisheries will not change annually. See the response to Comment 1.

*Comment 12:* The CSP allocations are generous to the charter sector, but it is time to settle the allocation debate and implement the CSP, even though it comes at a cost to the commercial sector and consumers.

*Response:* NMFS acknowledges the comment. As described in the response to Comment 1, one of the Council's primary objectives for the CSP is to establish a comprehensive management program for the charter halibut fisheries in Area 2C and Area 3A, with sector allocations that balance the differing needs of the charter and commercial sectors over the range of abundance and that float with varying levels of halibut abundance.

*Comment 13:* I support the allocations proposed in the Council's 2008 CSP recommendation. I am opposed to any increases to the charter sector from that allocation.

*Response:* NMFS acknowledges the comment. As described in the proposed rule, the Council adopted a motion in 2008 to recommend a CSP for the charter and commercial halibut fisheries in Areas 2C and 3A to NMFS. In July 2011, NMFS published a proposed rule for that CSP based on the Council's 2008 preferred alternative (76 FR 44156, July 22, 2011) and received more than 4,000

public comments. The majority of the comments addressed the proposed allocation percentages and the matrix of charter halibut fishery harvest restrictions that would have been automatically triggered by changes in the Area 2C and Area 3A annual CCLs supported by halibut exploitable biomass. In October 2011, in part due to questions raised in the public comments on the proposed rule, NMFS and the Council decided that further analysis and clarification of provisions of the proposed 2011 CSP were required. In December 2011, the Council requested a supplemental analysis of new information since its 2008 preferred alternative. This included an evaluation of the management implications and economic impacts of the proposed CSP at varying levels of halibut abundance. Based on this new evaluation and additional public input, the Council recommended a revised preferred alternative for the CSP in October 2012, which included the recommendations for allocations to the commercial and charter sectors that float with changes in halibut abundance. See section 2.5.7 of the Analysis for a review of the CSP allocations based on the Council's 2008 recommendation. Also see the response to Comment 7.

*Comment 14:* The CSP allocations demonstrate the Council's careful consideration of the potential impacts to the charter sector while tasked with developing a functional management plan for a fully allocated resource.

*Response:* NMFS agrees. Also see the response to Comment 7.

*Comment 15:* Under the CSP, both the commercial sector and the charter sector are tied to the same IPHC metric of stock status with clear, defined allocations.

*Response:* As described in the proposed rule for the CSP and in section 1.6.7 of the Analysis, the Council and NMFS recognize that one of the advantages of the CSP over the GHL program is that it uses the same method to establish commercial and charter halibut fishery allocations. The Council and the Secretary of Commerce have determined that the allocation to the commercial and charter halibut fisheries under the CSP provides a more transparent and equitable management response than the GHL program.

*Comment 16:* We hope NMFS will avoid the use of words such as "benchmark" to describe the CSP allocations. Such terms used for the GHL invited multiple lawsuits that were costly to the industry, the public, and the resource. The CSP sets clear allocations for the charter sector and a process to prevent allocation overages

before they occur. This must be reflected in the final rule.

*Response:* NMFS acknowledges the comment and notes that regulations implementing this final rule specify the determination of Area 2C and Area 3A annual charter halibut allocations from the annual CCL (see Tables 3 and 4 to subpart E of part 300).

*Comment 17:* The CSP's allocations to the charter sector are reduced from those proposed in 2011. For example, the 2013 Area 2C CSP allocations are less than the 2008 proposed CSP allocations after the calculations are adjusted for changes in accounting methods and sector accountability are considered.

*Response:* If the 2011 proposed rule for a CSP had been implemented, it would have allocated the charter sector 17.3 percent of the Area 2C combined catch limit (CCL) below 5 million lb, and 15.1 percent of the CCL above 5 million lb. The CSP implemented by this final rule establishes allocations to the charter sector in Area 2C of 18.3 percent and 15.9 percent of the CCL at low and high abundance, respectively. In Area 3A, the 2011 proposed rule for a CSP would have allocated the charter sector 15.4 percent of the CCL at low abundance and 14.0 percent at high abundance. The CSP implemented by this final rule establishes allocations to the Area 3A charter sector of 18.9 percent at low abundance, 17.5 percent at moderate abundance, and 14.0 percent at high abundance. Additionally, for Areas 2C and 3A the CSP includes fixed poundage allocations between percentage tiers to remove the "vertical drops" in allocation that would have occurred under the 2011 CSP (see Comment 20). Overall, the allocations provided to the charter sector in this rule are greater than the allocations contemplated in the 2011 proposed rule.

*Comment 18:* Why was Alternative 3 chosen as the allocation option for Area 2C? It appears to be a punitive response to the 2C charter sector for exceeding the GHL due to inadequate and inappropriate management measures. Previous overharvests were a result of poor management, not as a result of illegal fishing practices.

*Response:* NMFS agrees that charter harvests did not exceed the GHL due to illegal fishing practices. The GHL was exceeded in some years in part due to the rapid growth in the charter halibut industry in Area 2C, combined with the delay in promulgating charter harvest restrictions. These factors made it difficult for managers to set harvest restrictions to avoid exceeding the GHL, while meeting the Council's objectives

of avoiding in-season changes to harvest restrictions and maintaining a traditional season length. Until 2011, new charter halibut harvest restrictions were not implemented in time to prevent charter harvests from exceeding the GHL. As a result, the charter halibut fishery in Area 2C exceeded its GHL each year from 2004 through 2010. The CSP is not a punitive response to charter overharvest in Area 2C. The Council's rationale for the allocations for Area 2C is described in the preamble to the proposed rule and in section 1.6.7 of the Analysis.

*Comment 19:* Where in the analysis can we find graphical comparisons of the CSP and GHL allocations across their full range? Add a graphical comparison of the CSP and GHL, using the common measuring stick of logbook pounds, across the range of the CSP and GHL allocations, to show how much less the CSP allocation is than the GHL.

*Response:* NMFS has added a graphical comparison of the estimated CSP allocations to the GHL to section 2.5 of the Analysis as suggested by the commenter. Table 2–71 in section 2.8 of the Analysis presents estimates of charter and commercial catch limits if the CSP had been in place from 2008 through 2012. Based on the information in this table, the Area 2C CSP allocation to the charter sector would have averaged 662,000 lb and the GHL in these years averaged 845,000 lb. The Analysis estimates that the CSP allocation to the Area 2C charter sector would have averaged approximately 22 percent less than the GHL from 2008 through 2012. For Area 3A, the estimated CSP allocation to the charter sector would have averaged 3.3 million lb from 2008 through 2012 and the GHL in these years averaged 3.5 million lb. The Analysis estimates that the CSP allocation to the Area 3A charter sector would have averaged approximately 6 percent less than the GHL from 2008 through 2012. While this information was included in the Analysis that was available for public review before the proposed rule was published and was available for public comment during the comment period on the proposed rule, NMFS agrees with the commenter that a graphical representation of this information is useful to further illustrate the anticipated impacts of the CSP allocations. NMFS notes that section 2.5 of the Analysis presents a thorough comparison of the GHL with all of the allocation alternatives considered by the Council as it developed the CSP.

*Comment 20:* If the goal was allocations that float with abundance, how do you explain the flat spot in the

Area 3A allocation between CCLs of 20 and 25 million lb?

*Response:* The "flat spots" or fixed poundage allocations will remove the vertical drops that would have occurred between allocation percentage tiers. The rationale for these allocation tiers is described in section 2.5.11 of the Analysis and the section entitled "C. Annual Commercial Fishery and Charter Fishery Allocations" of the proposed rule. Without this adjustment, a 1 lb increase in CCL could trigger a significant drop in the poundage allocated to the charter halibut fishery. For example, without the fixed poundage allocation between 20 and 25 million lb, if the Area 3A CCL were set at 19.9 million lb, the charter allocation would be 17.5 percent, or 3.5 million lb. If the CCL increased to 20 million lb, the charter allocation percentage would be 14.0 percent, or 2.8 million lb. By adding the fixed poundage allocation to the CSP, the vertical drop in charter sector allocation is removed. The Area 3A charter allocation would be fixed at 3.5 million lb until the CCL increases to the point where the charter allocation percentage at higher abundance levels would not result in a decrease in poundage allocated to the charter sector, in this example, at 25 million lb (see Figure 3 of this preamble).

The fixed poundage allocations were added in response to public comment on the CSP proposed rule published in 2011 (76 FR 44156, July 22, 2011), which noted the effects of the vertical drop resulting from the change in percentage allocations to the charter sector under the CSP. The Council also received testimony requesting revised CSP allocations that addressed the vertical drop in charter allocations. The fixed poundage allocations will benefit the charter sector by ensuring that the poundage allocation to the sector does not decrease over a specified range of CCLs.

*Comment 21:* What happens if the charter halibut harvest exceeds the CSP allocation? Where and how are overages in charter harvest accounted for?

*Response:* An overage by any sector in any given year does not affect other sectors in that same year. An overage by any sector affects all users in the subsequent year by increasing fishery removals that result in a lower estimated initial biomass. The IPHC assessment considers an overage as a removal higher than that fishery's catch limit. That higher removal in a fishing year means that biomass is incrementally lower at the end of that year than it would be otherwise. Underages have a similar effect on biomass but in the opposite direction,



i.e., biomass estimation for the subsequent year begins at a higher level than it would otherwise, and all sectors will benefit from this.

*Comment 22:* The lower tiers of the new Area 3A CSP allocation are based on adding 3.5 percent of the CCLs to the 2011 CSP alternative. Why was 3.5 percent of the CCLs not added to the entire 2011 3A CSP alternative?

*Response:* As described in the response to Comment 5, in Area 3A, the percentage allocation to the charter sector at higher levels of abundance is based on the same formula used to calculate the GHL. While the Council considered increasing this allocation percentage to provide the Area 3A charter sector with a larger poundage allocation, the Council ultimately determined that a larger allocation would give more halibut to the charter fishery than it could harvest based on historical catch estimates and information on charter business operations received during the development of the CSP. The Council felt it was inappropriate to recommend a higher charter sector allocation that would likely not be harvested in the charter fishery.

*Comment 23:* As more fish are caught the CSP allocations for charter fisheries go down and the allocations for commercial fisheries go up. To shift the allocation away from the charter sector, which has only a small percentage of bycatch, to the commercial sector, which has higher rates of bycatch is not a sustainable solution. The allocation for both fisheries should go down as the amount of fish caught goes up.

*Response:* The allocations to the commercial and charter halibut sectors are not based on the amount of halibut caught. They result from apportionment of the CCL determined by the IPHC, after estimating the exploitable biomass, multiplying by a target harvest rate, and deducting other removals (e.g., unguided sport harvest, subsistence harvest). Figure 1 depicts how the CCLs and allocations will be calculated under the CSP.

As the CCL increases, the percentage allocated to the charter sector may decrease, but the pounds allocated to the charter sector will continue to increase. The Council determined that allocating a larger percentage to the charter halibut fishery at high abundances would allocate more pounds of halibut to the charter halibut fishery than they could harvest, based on available historic harvest data and information on charter business operations received during the development of the CSP (see section

1.6.7 of the Analysis for additional detail).

*Comment 24:* The current recommendation to give the underages of the charter fishing industry to the commercial fishing industry is unfair.

*Response:* The CSP does not allocate underages in the charter halibut fishery to the commercial halibut fishery. See Comment 21 for a description of how the IPHC accounts for underages and overages in the charter halibut fishery.

*Comment 25:* Underages in charter sector harvests should be available to be caught and sold by the charter fleet the same as commercial IFQ fish or added back to the allowable harvest for the following year.

*Response:* Commercial halibut fisheries are managed under the IFQ Program with individual allocations. IFQ management allows for underages of individual IFQ accounts to be carried forward to the QS holder's account in the following year, up to specified limits (see regulations at § 679.41). The charter fishery is not managed with individual allocations, so there is no mechanism to carry forward underages in that fishery as there is in the commercial fishery. As described in the response to Comment 21, underages will result in the halibut biomass estimation for the subsequent year beginning at a higher level, and all sectors will benefit from this.

*Comment 26:* The halibut resource should be split 50:50 between the commercial and sport sectors.

*Response:* The proposed rule for this action and section 1.6.7 of the Analysis describe the rationale for the allocations to the charter and commercial sectors under the CSP. The Council reviewed historical harvests as a proportion of estimated commercial and charter CCLs as well as recent harvests by each sector to establish the allocations under the CSP. NMFS notes that allocations among fishery user groups are commonly based on historical and recent harvests by each sector. NMFS has determined that the Council's decision to use historical and recent harvests in the Area 2C and 3A commercial and charter halibut fisheries provides a reasonable and logical basis for the CSP allocations implemented by this final rule. The commenter could propose different allocations to the commercial and charter sectors to the Council for future consideration.

*Comment 27:* The commercial halibut longliners were given more fish nearly every year than their initial allocation in 1995, while the GHL and daily bag limits were not increased for charter anglers.

*Response:* NMFS agrees that commercial catch limits in Area 2C and

Area 3A have fluctuated relative to the catch limits established for 1995, the first year of the IFQ Program. However, since the implementation of the IFQ Program, the overall proportion of total halibut harvested in the Area 2C and Area 3A commercial halibut fishery has declined and the proportion harvested in the charter halibut fishery has increased. NMFS also agrees that the GHL was not responsive to changes in halibut abundance. As described in the response to Comment 1, one of the Council's primary objectives for the CSP is establish a comprehensive management program for the charter halibut fisheries in Area 2C and Area 3A, with sector allocations that balance the differing needs of the charter and commercial sectors over a wide range of halibut abundance and that also float with varying levels of halibut abundance. This final rule furthers that objective by establishing CSP allocations for the Area 2C and 3A commercial and charter halibut fisheries that vary with halibut abundance.

*Comment 28:* The real reason that commercial catch limits have been reduced in Areas 2C and 3A is the IPHC's switch to using a coastwide model in the stock assessment, not harvest overages by the charter sector.

*Response:* Overall, commercial catch limits have decreased with decreasing exploitable biomass. The Pacific halibut stock has been declining continuously over much of the last decade as a result of a number of factors, including decreasing size-at-age and poor recruitment strengths. This decline in abundance has been apparent coastwide in varying severity. Although the IPHC has shifted from area-specific stock assessments to a coastwide assessment, the mere shift in stock modeling does not account for the decreasing size-at-age and poor recruitment strengths. Catch overages by the charter fishery sector can result in a lower estimated initial biomass for all users and are incorporated into stock assessments, but are not the sole reason for reduced exploitable biomass and reduced commercial catch limits in Areas 2C and 3A.

*Comment 29:* The Council's Scientific and Statistical Committee in the analysis of the CSP said it believes that the magnitude and range of uncertainties concerning projections of charter harvests will prevent the charter harvest forecast accuracy from being within a range of 3.5 percent of the target allocation.

*Response:* This comment refers to the 3.5 percent target range proposed around the allocations in the 2011 proposed CSP. This target range was not



included in the CSP implemented in this final rule and the comment is no longer applicable. The processes for projecting charter harvests and recommending any necessary management measures are described in the "Catch Sharing Plan for Area 2C and Area 3A" section of this preamble.

*Comment 30:* The proposed rule does not show a summary of the catch records for Charter Halibut Permits. Such data by area and how it compares to the commercial catch for each area would aid in setting the allocation for sport fishing.

*Response:* The Council considered historical and recent halibut catch data for the commercial and charter sectors in Areas 2C and 3A in its recommendation for the CSP (see sections 1.7.1.2 and 2.3.2.2 of the Analysis; see also the response to Comment 10).

#### *Separate Accountability*

*Comment 31:* Separate accountability is not needed for the charter halibut fishery because there is no halibut wastage in charter fishing.

*Response:* NMFS disagrees with the commenter's assertion that there is no halibut wastage (discard mortality) associated with the charter halibut fishery. As discussed on page 39135 of the proposed rule, wastage occurs in the charter halibut fishery as a result of stress or injuries sustained from hooking, hook removal, and handling of released fish. Wastage is the product of the number of fish released, the discard mortality rate, and the average weight of the released fish. Management measures, such as size limits, can affect the number and average weight of released fish and the resulting number of pounds of discard mortality. Separate accountability, the process of deducting wastage from each fishery sector's allocation, is described in the "D. Calculation of Annual Fishery Catch Limits" section of the preamble to the proposed rule.

*Comment 32:* The IFQ Program allows the commercial sector to highgrade (discard fish below a desired size) to deliver only most valuable fish to market. Legal size halibut caught early in the season are discarded to highgrade for larger fish that fetch a higher price. When the commercial fishery operated under the old derby system prior to the IFQ Program, all halibut caught went to market, resulting in less waste. The commercial sector should pay for all halibut it wastes.

*Response:* Federal regulations at § 679.7(f)(11) require that all legal-size halibut caught in the commercial fishery be retained until an individual's quota

is reached. The extent to which highgrading may occur in the commercial fishery is unknown currently. Data from the recently implemented restructured observer program (77 FR 70062, November 21, 2012) may provide additional information in future years. Certain circumstances may encourage highgrading; however, the benefits of receiving a higher price by highgrading may not offset the added expense of fishing longer or taking additional trips to fully harvest one's halibut IFQ. The IPHC will use the best available information to estimate wastage by the commercial fishery and may incorporate data from the restructured observer program as they become available. Under the CSP, the commercial allocation will be reduced by an estimate of its wastage to obtain the annual commercial catch limit. Separate accountability for wastage promotes conservation by providing an incentive for commercial and charter sectors to reduce wastage, as wastage is deducted from each sector's allocations.

*Comment 33:* NMFS should address bycatch and wastage of the commercial fleet instead of limiting the charter fleet.

*Response:* As described in the proposed rule for the CSP and in section 2.5.5 of the Analysis, the commercial and charter halibut fisheries will be separately accountable for their discard mortality or "wastage" under the CSP. See also the response to Comment 32.

*Comment 34:* The CSP proposed rule provides for sector accountability of discard mortality (wastage) by deducting the projected wastage after each sector's allocation has been determined from the CCL. The IPHC endorses this approach and believes it is more equitable and appropriate than previous procedures. However, Figure 1 omits any mention of wastage by the unguided sport fishery. While outside the CSP, the IPHC will be looking to include an estimate of discard mortality for this sector, in addition to its estimated harvest, as part of "Other Removals" deducted from the Total CEY. The IPHC also concurs with the expectation that ADF&G will provide estimates of charter fishery wastage for each area.

*Response:* NMFS acknowledges the comment and the IPHC's plan to, in the future, include an estimate of unguided sport wastage in "Other Removals."

*Comment 35:* The Analysis on page 160, Table 2–32, uses proxy data for charter waste. Subsequent tables use the proxy data to estimate charter and commercial allocations under separate accountability. How can proxy data be used to incorporate separate

accountability into the allocation decision? How did the Council factor separate accountability into the allocation decision without data on guided wastage and only partial data for commercial wastage?

*Response:* Proxy data were used in a modeling exercise to examine the effects on the commercial and charter catch limits of incorporating separate accountability into the allocations. Proxy data were used for the charter estimates of wastage because an estimate of wastage for that sector was not yet available. The use of proxy data allowed the Analysis to show the direction and approximate magnitude of changes in charter and commercial catch limits under separate accountability (Tables 2–33 and 2–34 of the Analysis). NMFS determined that the Council's decision to include separate accountability in the CSP is consistent with its program objectives and promotes conservation because it would encourage better handling of discarded fish to reduce the discard mortality rates and thus increase fishery catch limits.

*Comment 36:* Under separate accountability there will be a direct incentive to increase sector catches by decreasing sector discard mortality (wastage). Both sectors will want their reduced wastage to be assessed and incorporated into the calculations of catch limits. Are ongoing wastage surveys planned? We suggest managers consider options for achieving this goal.

*Response:* NMFS agrees that separate accountability will provide an incentive to reduce sector wastage to increase catch limits. Wastage estimates for each sector will be based upon the best available information. The IPHC estimates wastage in the commercial fishery from data gathered during its fishery surveys. The IPHC may incorporate observer data to improve this estimate in future years. Estimates of charter sector wastage will, in part, depend on the management measures in place. As noted in section 2.5.5 of the Analysis, implementation of size limits may have an effect on discard mortality estimates for the charter sector because wastage in the charter fishery is a function of the number of fish released. Additional fishery surveys or research on wastage in the commercial and charter sector may be developed after reviewing current data, and forthcoming data from the restructured observer program.

*Comment 37:* The final rule should broaden the responsibility for wastage estimates so that ADF&G, the IPHC, or NMFS could provide them.

*Response:* The Council recommended that the IPHC deduct an estimate of wastage for each sector's allocation to calculate their annual catch limits. The CSP does not specify who will estimate wastage or how it will be estimated. The IPHC currently estimates wastage for the commercial fishery. NMFS anticipates that ADF&G will provide wastage estimates for the charter fishery because ADF&G has been collecting data on the numbers of halibut kept and released through their saltwater charter logbooks, statewide harvest survey, and creel surveys.

*Comment 38:* The only study of released fish mortality of Pacific halibut was conducted in 1958–1960 and used only J-hooks. This study estimated the release mortality of halibut at 3.8 percent; however, guided and commercial wastage depend on a variety of factors such as hook type, abundance, harvest rules, and weather.

*Response:* NMFS believes that the comment refers to a 1969 report to the IPHC by G. J. Peltonen on the viability of tagged Pacific halibut ([www.iphc.int/publications/scirep/Report0052.pdf](http://www.iphc.int/publications/scirep/Report0052.pdf)). This study demonstrates the difficulties in determining mortality in large species like Pacific halibut because the captured fish are usually held for long periods to determine survival, and the conditions in the unnatural environment in which the fish are held confound the results. The report concluded that there is a mortality rate of 2 to 5 percent for fish released in excellent condition. The midpoint of this range (3.5 percent) is the basis of the discard mortality rate that the IPHC currently applies to commercially caught halibut released in excellent condition.

NMFS agrees that discard mortality rates are influenced by a variety of factors and notes that the IPHC uses the best available information from studies on halibut and other species to develop discard mortality rates. The IPHC considers the findings of several studies, including mark-recapture studies, that examine mortality rates associated with a variety of factors such as hook type and size, handling, water temperature, and longline soak times, to develop discard mortality rates for halibut released with minor, moderate, or severe injuries. Similarly, estimates of discard mortality in the charter fishery will be based on the best available information. See Meyer (2007) for a discussion of some of the factors that may be incorporated into wastage estimates for the charter fishery (<http://alaskafisheries.noaa.gov/npfmc/PDFdocuments/halibut/HalibutDiscards907.pdf>).

*Comment 39:* How is separate accountability for GAF calculated and from which sector's allocation will this wastage be deducted?

*Response:* ADF&G requires that charter vessel guides record the number of halibut kept and the number released in the saltwater charter logbook. Under the CSP, guides will also be required to record in the logbook the number of GAF harvested. The number of halibut released in pursuit of GAF will not be differentiated from the number of halibut released in pursuit of non-GAF halibut kept by charter vessel anglers. Therefore, there will not be a wastage estimate specifically for GAF; only a single wastage estimate for all halibut kept and released in the charter halibut fishery. Charter halibut wastage will be deducted from the charter sector's allocation to obtain the charter catch limit.

#### *Guided Angler Fish (GAF)*

*Comment 40:* GAF will not work with most charter fishing business models. Charter anglers will not want to purchase GAF and commercial QS holders will not lease IFQ as GAF at a reasonable price. There are too many problems with the proposed GAF program for implementation at this time.

*Response:* The Council recommended GAF as part of the CSP to provide an opportunity for the charter halibut fisheries in Area 2C and Area 3A to increase fishing opportunities when the charter allocation may be constraining. The Council recommended GAF after considering a number of alternative mechanisms for transferring halibut allocation from the commercial sector to the charter sector. The Council also recognized that some charter operators may choose not to use the GAF provision as part of their business plans (see sections 1.6.7 and 1.6.8 of the Analysis).

The Council's Charter Halibut Stakeholder Committee recommended GAF as its preferred method for providing the charter sector with access to additional halibut under a potentially constraining CSP allocation. During development of the CSP, the Council received public testimony in support of the GAF Program from stakeholders who participate in the commercial and charter halibut fisheries. The Council also received testimony from charter sector representatives expressing concern regarding the commercial sector's willingness to lease halibut IFQ to charter operators. They noted a variety of reasons for their concern, including tensions that exist between the participants in the commercial and

charter sectors in Areas 2C and 3A, potentially insufficient halibut IFQ available for lease, potentially insufficient capital among smaller charter operations to lease IFQ, and uncertainty regarding the willingness of clients to pay for the opportunity to retain GAF. The Council also heard testimony from several commercial halibut QS holders indicating that they would be willing to lease halibut IFQ to the charter sector (see section 2.5.12 of the Analysis and the response to Comment 54). Finally, NMFS notes that charter businesses in Area 2C have expressed an interest in leasing GAF to augment the one-fish bag limit currently in place for guided anglers. Based on this information, the Council determined, and NMFS agrees, it is likely that some IFQ will be made available for lease to charter operators under the GAF program.

NMFS anticipates the Council will review the GAF program in the future to assess its effectiveness at providing anglers with additional opportunities for retaining halibut in the charter fisheries. This review likely will be based on data NMFS collects on transfers of IFQ to GAF and on returns of unused GAF to halibut IFQ holders. NMFS also anticipates that the Council will receive feedback from commercial and charter halibut fishery participants who use GAF. The Council may consider revisions to the GAF program based on its review of GAF use and on input from stakeholders.

*Comment 41:* I support GAF. It is a first step towards a fair compensated market-based reallocation between sectors.

*Response:* NMFS acknowledges the comment. See also response to Comment 7.

*Comment 42:* The CSP is punitive as it forces recreational anglers to purchase additional halibut from quota already assigned to the commercial sector. It is not fair to require recreational anglers to buy the right to catch additional fish from the commercial sector.

*Response:* Charter vessel anglers are not required to purchase GAF, nor is the GAF program punitive. Use of GAF is optional for charter vessel anglers who wish to retain more fish than allowed under the bag limit in effect for charter vessel anglers, up to the limit in place for unguided anglers. The GAF program is an authorized additional use of halibut IFQ that will provide IFQ holders, charter guides, and charter anglers more flexibility, while maintaining total harvests within the targets set by the IPHC. See also response to Comment 2, Comment 7, and Comment 40.

*Comment 43:* Instead of GAF, why not just allocate more halibut to the charter sector?

*Response:* The GAF provision was intended to provide charter vessel anglers additional harvest opportunities during years of low abundance when guided anglers are limited to fewer or smaller fish than unguided anglers under the CSP allocation of halibut to the charter sector (see response to Comment 7). The rationale for the specific allocation provided to the charter and commercial sectors is described in detail in the preamble to the proposed rule and summarized in the preamble for this final rule.

*Comment 44:* Is GAF a fish or a fishing opportunity? A GAF will be sold if and only if a fish is landed; at that point it is a fish. Why would a charter operator sell a GAF if no fish was harvested? Why would a guided angler buy a GAF if no fish is landed?

*Response:* A GAF is a fish. Regulations at § 300.61 of this final rule define GAF as halibut transferred within a year from an Area 2C or Area 3A IFQ permit holder to a GAF permit that is issued to a person holding a charter halibut permit for the corresponding IPHC regulatory area. A GAF permit authorizes a charter vessel angler to retain GAF in the IPHC regulatory area specified on a GAF permit during a charter vessel fishing trip authorized by the charter halibut permit. GAF are not debited from a GAF permit holder's account unless a halibut is caught, retained, marked, measured, recorded, and electronically reported as required by regulations at § 300.65(c)(5) and § 300.65(d).

NMFS agrees that the market-based nature of IFQ to GAF transfers makes it likely that some or all of the cost of obtaining GAF will be borne by the charter vessel anglers using GAF. The GAF permit holder decides how he or she would like to offer charter vessel anglers the opportunity to retain GAF. A charter fishing trip is an opportunity to catch fish, but not a guarantee that a certain number or size of fish will be caught, and anglers do not always catch their bag limit on every trip. The GAF permit holder and charter vessel anglers will be able to decide how to distribute the cost and opportunity for using GAF. Although some charter operators may offer GAF to an individual charter vessel angler at the time a halibut is caught, NMFS anticipates that some charter operators may choose to spread the cost of leasing GAF from IFQ holders across all charter vessel anglers who use their services. If this is the GAF permit holder's business model, then the cost of charter vessel fishing trip

with that operator may increase for all anglers, including those who do not retain GAF. See also response to Comment 63.

*Comment 45:* How much GAF will cost and will the cost vary among charter operators? What is the basis for GAF prices and will the price for GAF vary annually?

*Response:* Section 2.5.12 of the Analysis notes that the number of GAF transactions and the prices for those transactions will be determined by the supply of and demand for GAF. Because the market price for GAF will be determined by the value of halibut in the directed commercial fishery and charter vessel anglers' willingness to pay higher prices for trips that allow greater harvest flexibility by using GAF, it is not possible to estimate the cost of GAF to charter vessel anglers in Area 2C or Area 3A. NMFS anticipates that because there are a number of different types of charter operations in Areas 2C and 3A, the demand for, and cost of, leasing IFQ as GAF will vary among charter operators. NMFS also anticipates that the cost of GAF to charter vessel anglers will vary annually because it will depend on a number of factors, including the supply of halibut IFQ for lease as GAF, the demand for GAF, the average weight of GAF used to convert pounds of IFQ to number of GAF, and the charter harvest management measures in place that year.

In determining whether to lease IFQ as GAF, most individual charter operations will need to consider whether anglers using its services are willing to pay increased prices for using GAF. Charter operations attracting anglers willing to pay an increased cost for the experience of harvesting more or larger fish will be more likely to utilize GAF. Those charter operations that do not attract such anglers will be less likely to participate in the GAF program. In the same way, charter vessel anglers will need to determine if the opportunity to harvest more or larger halibut is worth the increased cost.

*Comment 46:* How much will it cost to lease GAF? How will CHP holders find IFQ to lease as GAF? Is it possible that some charter businesses will be discriminated against and denied the opportunity to lease GAF?

*Response:* Section 2.5.12 of the Analysis describes that the lack of cost data associated with the commercial and charter operations and the difficulty of projecting GAF supply and demand limits the Council and NMFS' ability to provide detailed estimates of the quantity and lease price for transfers between IFQ and GAF. The Analysis provides a discussion of the factors

affecting the supply of GAF and a qualitative assessment of which types of IFQ holders may be more likely to lease IFQ as GAF. An IFQ holder's willingness to lease IFQ as GAF could be affected by factors such as quantity and distribution of IFQ holdings across regulatory areas, costs associated with harvesting their IFQ holdings in the commercial fishery, relationships with participants in the charter sector, agreements with processors, or enjoyment derived from fishing. NMFS anticipates that each IFQ holder will employ his or her own criteria when determining whether to lease some or all of available IFQ to the charter sector.

NMFS expects that halibut IFQ will be available for lease as GAF to charter operators in a variety of ways. Some CHP holders hold or may be eligible to purchase their own halibut QS, which yields annual IFQ that they may transfer and use in the charter fishery. Transfers of IFQ to GAF may be agreed upon directly between halibut QS holders and CHP holders, or brokers who currently facilitate transfers of halibut IFQ and charter halibut permits may act as intermediaries in transactions. Brokers may also help willing QS holders find CHP holders, and vice-versa.

Given the market-based nature of the GAF program, the Council and NMFS cannot guarantee that a charter operator seeking to lease IFQ as GAF will be able to enter into an agreement with one or more IFQ holders to obtain the amount of GAF he or she would like to use. However, section 2.5.12 of the Analysis notes that a mutually beneficial agreement must be reached before a lease from IFQ to GAF will occur; therefore, the Council and NMFS believe that neither the charter operator nor the IFQ holder possesses sufficient market power to force the other into a lease agreement. As described in the response to Comment 7, the GAF program was not intended to provide a mechanism to replace reductions in the charter allocation relative to current or historical harvest levels. See also response to Comment 50.

*Comment 47:* The uncertainty in how many GAF will be available each year will make it difficult for charter businesses to develop business and marketing plans.

*Response:* NMFS agrees that there will be some uncertainty in how many GAF will be available for lease each year and how much demand there will be for GAF. Whether IFQ is leased to members of the charter sector depends on several factors. As discussed in the response to Comment 45 and Comment 46, these factors occur on both the demand side (CHP holders' ability to forecast angler

demand, the charter management measures in place for that year, and angler willingness to purchase GAF) and on the supply side (IFQ holders' willingness to lease their halibut IFQ holdings as GAF). Both the supply and demand sides are equally important, because a mutually beneficial agreement must be reached before a lease will occur. Additional factors affecting the supply of and demand for GAF are discussed in the Analysis in sections 2.5.12.2 and 2.5.12.3, respectively.

While NMFS acknowledges that there will be some uncertainty from year to year regarding the supply of and demand for GAF, annual charter management measures under the CSP will be established the beginning of the year and are not changed for the remainder of that fishing year. Therefore, CHP holders and halibut IFQ holders will know early in the fishing season if there is a need for charter operators to lease GAF to provide anglers with additional opportunities to harvest halibut in the charter fishery.

*Comment 48:* Just as commercial halibut fishermen have invested in quota shares, charter halibut permit holders may invest in commercial halibut QS to offer their clients as GAF.

*Response:* NMFS agrees that one way in which some charter halibut permit holders may control the cost of using GAF for charter vessel anglers is to purchase commercial QS and transfer the IFQ resulting from that QS for use as GAF. Some charter halibut permit holders already hold commercial halibut QS and could use this method for obtaining GAF. However, NMFS notes that some charter operators in Area 2C and Area 3A would still need to meet all requirements to be eligible to hold halibut QS. For example, regulations at § 679.41(d) generally specify that only persons with 150 days or more of experience working as an IFQ crewmember are eligible to hold halibut QS.

*Comment 49:* Commercial fishermen are allowed to carry over to the following season up to 10 percent of their annual allocation. One way that commercial and charter operators could structure GAF contractual agreements is to allow this 10 percent to be contractually held in reserve for a charter operator to use as needed over the course of the season. Any unused portion will be automatically returned to the IFQ holder by NMFS at the end of the season, and any used portion will be paid for at an agreed upon rate.

*Response:* NMFS acknowledges the comment and expects that commercial and charter operators will develop a variety of arrangements, possibly

including the one described by this commenter, when negotiating contracts for the lease of IFQ as GAF. NMFS notes that there are commercial quota share holders who will likely be willing to lease IFQ as GAF. See also response to Comment 46.

*Comment 50:* Current "hired skipper" and leasing arrangements in the IFQ fishery suggest that the likely GAF lease rate will be approximately 50 percent of the ex-vessel per pound value of the QS from which the IFQ is derived. Since the average size halibut in the charter fishery is 20 lb and the current average ex-vessel price is \$4.50/lb, a charter operator could expect to pay approximately \$45 per GAF.

*Response:* NMFS acknowledges the comment. NMFS received numerous comments on the CSP proposed rule estimating that GAF will cost between \$100 and \$200, and expressing concerns that GAF will be cost prohibitive for many charter businesses and anglers. Predicting the specific cost for GAF in Area 2C or 3A is not possible as described in response to Comment 46. NMFS notes that a price closer to \$45 per GAF could make GAF use more affordable and desirable for charter operators and charter vessel anglers.

*Comment 51:* The GAF program conflicts with the prohibition on leasing in IFQ regulations and works against the IFQ Program's goal of having an owner-onboard fishery. The option to lease IFQ as GAF will encourage absentee IFQ holders in the commercial fleet.

*Response:* The response to Comment 7 describes the Council's rationale for recommending the GAF program to provide a mechanism for transfer between the commercial and charter halibut sectors in Areas 2C and 3A. As discussed in the "D. GAF Transfer Restrictions" section of the preamble to the proposed rule, the Council intended for the GAF program to provide IFQ holders some flexibility in how they use their IFQ, with limitations. In recommending the restrictions on the amount of IFQ that an IFQ holder may transfer as GAF, the Council considered IFQ Program objectives to promote an owner-onboard fishery for certain types of halibut QS holdings. NMFS believes that the GAF transfer restrictions implemented by this final rule appropriately balance the Council's objective to provide the charter sector with access to additional halibut under a potentially constraining CSP allocation with its objectives for the IFQ Program.

*Comment 52:* The charter fishery representatives who initially proposed the GAF program insisted that GAF be for lease only.

*Response:* Section 1.6.8 of the Analysis describes that in developing the CSP, the Council also considered and rejected an alternative that would have allowed CHP holders to transfer (i.e., purchase) commercial halibut QS, rather than leasing IFQ, because the proposal was not supported by the charter halibut sector. As described in the response to Comment 40, the Council's Charter Halibut Stakeholder Committee recommended GAF as its preferred method for providing the charter sector with access to additional halibut under a potentially constraining CSP allocation. The final proposal from the committee to the Council only contained an annual transfer of IFQ (lease) option, not an option for charter operators to purchase QS for permanent use in the charter fishery. However, as noted in the response to Comment 48, charter operators who are eligible to receive QS by transfer may purchase QS for Areas 2C and 3A and use the resulting IFQ for GAF.

*Comment 53:* Any transfer of IFQ from the commercial sector to the charter sector should be accommodated through an arrangement that allows the charter fleet to purchase QS, not lease, IFQ for use in a common pool to permanently supplement the baseline charter allocation.

*Response:* The option for the charter sector to purchase quota share to augment the charter allocation was not among the alternatives considered by the Council. See response to Comment 52 and Comment 152.

*Comment 54:* Some commercial operators in support of the GAF program would prefer that sector allocations be allowed to be transferred both ways. They note that no charter operator or angler will be forced to use GAF, and that their association has members who are willing to work with local charter operators to use the GAF program.

*Response:* NMFS notes the support for the GAF program and willingness to participate by some commercial IFQ holders. As discussed in the response to Comment 40, NMFS anticipates the Council will review the GAF program in the future and may consider revising the program based on its use and on input from stakeholders.

*Comment 55:* What measures will determine the success or failure of the GAF provision?

*Response:* The Council and NMFS will review a range of factors such as amount of use, cost, and input from commercial and charter operators when reviewing the use of GAF and any potential revisions. The responses to Comment 45 and Comment 46 describe

that the quantity and cost of GAF used will depend on a number of factors that affect the supply of and demand for GAF. While the Council and NMFS cannot estimate how much GAF will be used in the charter halibut fisheries with available information, input from fishery participants to the Council during development of the CSP and in comments received on the CSP proposed rule indicate that some IFQ will be leased as GAF and used in the charter halibut fisheries.

*Comment 56:* Does NMFS expect anglers who harvest smaller than average GAF to pay for those who harvest larger than average GAF?

*Response:* The proposed rule for the CSP describes that NMFS issues halibut IFQ in pounds and will issue GAF in numbers of fish. The conversion factor from IFQ pounds to number of fish for GAF will be based on the average weight of GAF from the previous year as estimated from GAF length data reported to NMFS through the electronic GAF reporting system (see “F. GAF Reporting Requirements” section of the proposed rule and regulations at § 300.65(c)(5)(ii)(E)) implemented by this final rule. For example, if a charter permit holder requested, and NMFS approved, a transfer of 5 GAF and the conversion factor for that area was 20.7 lb (9.4 kg), then 104 lb (47.2 kg) of IFQ would be debited from the IFQ holder’s account for that area as follows: 5 GAF × 20.7 lb = 103.5 lb (46.9 kg) and rounded up to 104 lb (47.2 kg).

NMFS acknowledges that the sizes of retained GAF will vary around the average weight estimate for GAF in each area. Section 2.5.12.1 of the analysis describes that charter vessel anglers who harvest GAF that are larger than the average GAF weight used to convert IFQ to GAF may benefit relative to anglers who harvest smaller than the average GAF weight. The Council and NMFS considered this information and determined that using the average weight of GAF from the previous year as reported to NMFS to convert IFQ pounds to number of GAF is consistent with the Council’s objective to provide an effective mechanism for transferring halibut from the commercial to the charter sector. This approach minimizes changes to operating practices in each fishery and to the existing recordkeeping and reporting system for the IFQ Program.

The Council considered issuing GAF in pounds rather than fish, but CHP holders would then be limited by GAF transfer restrictions to different numbers of GAF based on their area, fishing practices, and results. Section 2.5.12.1 of the Analysis describes the effects of

issuing GAF in pounds rather than in numbers of fish. In 2010 ADF&G estimated the average weight of sport caught halibut landed at the Prince of Wales Island port to be 14.8 lb, while sport caught halibut landed at the Glacier Bay port averaged 47.4 lb. If GAF were issued in pounds, a CHP operator in the Prince of Wales Island area would be eligible under GAF transfer restrictions to lease GAF to harvest 3.2 times as many fish as the person operating in Glacier Bay. Additionally, charter operators offer charter vessel anglers the opportunity to harvest a certain number of fish, not a certain poundage of fish. Issuing GAF in pounds would require charter operators wishing to lease IFQ as GAF to estimate the number of pounds of halibut to lease rather than the number of halibut, which could potentially be challenging to determine in advance. For these reasons, NMFS and the Council determined that numbers of fish was the more appropriate unit in which to issue GAF.

NMFS will not participate in price negotiations for GAF, as NMFS considers those negotiations to be private, voluntary, market-based transactions between charter operators who hold GAF and charter vessel anglers using their services. NMFS anticipates that charter operators could use different pricing methods to accommodate different sizes of retained GAF. Some operators may choose to charge anglers per GAF, and could adjust the price depending on the size of the GAF. Some charter operators may choose to spread the cost of leasing GAF from IFQ holders across all charter vessel anglers, particularly those operators affiliated with lodges that offer charter vessel fishing trips as part of an overall package of services.

*Comment 57:* The CSP uses the previous year’s estimate of GAF average weight to convert IFQ pounds to numbers of GAF. GAF harvest (in pounds) is counted toward the individual quota of the IFQ holder that leased the fish. The weight of each GAF harvested by charter clients can be estimated from length data reported in the electronic reporting system as described on page 39150 of the proposed rule. If the estimated average weight of GAF harvest exceeds or is less than the previous year’s average weight used to convert IFQ to GAF, the actual harvest will represent an overage or underage of IFQ. Since the actual weight can be estimated, we suggest NMFS provide estimates of the actual weights of GAF to the IPHC for stock assessment purposes (e.g., accounting for annual removals).

*Response:* NMFS agrees and will provide these data to the IPHC to incorporate into its annual stock assessments.

*Comment 58:* In any given year, if the actual GAF poundage harvested exceeds the IFQ poundage converted to GAF, who pays for the excess harvest? In other words, how is GAF overharvest accounted for?

*Response:* The factor for converting IFQ pounds to number of GAF is the average weight of GAF from the previous year reported by charter operators in the GAF electronic reporting system. NMFS anticipates that the estimated weight in pounds of all GAF retained and reported in the electronic reporting system will not vary significantly from the number of pounds converted from IFQ to GAF for that year and deducted from IFQ account holders because some GAF will be larger and some will be smaller than the average GAF weight used as the conversion factor. Nevertheless, as described in the response to Comment 57, NMFS intends to annually provide the IPHC with estimates of GAF weights for Area 2C and Area 3A based on reported GAF length. NMFS anticipates the IPHC will use these data in its stock assessment for the following year to account for any differences between converted GAF weight deducted from IFQ accounts and estimated GAF weight reported to NMFS in the previous year. Such differences will affect the halibut biomass estimate for the next year, but will not be explicitly added or subtracted from the next year’s catch limits for either sector. This is the same approach the IPHC will use to account for charter harvests that exceed or are less than the charter sector’s catch limits under the CSP (see response to Comment 21).

*Comment 59:* “IFQ pounds” for halibut is defined as net weight, i.e., without gills and entrails, head-off, washed, and without ice and slime. It would make the CSP more consistent with other halibut regulations if the definition of “net weight” was included. In the description for the transfer between IFQ and GAF (page 39138 of the proposed rule) the text is somewhat confusing, as it states “the equivalent number of net pounds of halibut rounded up to the nearest whole net pound.”

*Response:* No change was made from the proposed rule. “Net weight” is defined at § 679.2 to mean the weight of a halibut that is gutted, head-off, and washed or ice and slime deducted. The method of rounding net weights to the nearest whole pound results in the fewest conversion errors when GAF are

converted back to IFQ, as explained in the proposed rule and section 2.5.12.4 of the Analysis.

*Comment 60:* What prevents someone who holds both commercial QS and a charter halibut permit (CHP) from transferring IFQ to GAF on his CHP and then selling GAF, which when harvested greatly exceed the average poundage used to create the GAF? The above example would amount to NMFS-sanctioned overharvest of the holder's IFQ. Where is the individual accountability in the above example?

*Response:* NMFS expects that the average size of harvested GAF will be close to the average used for the conversion factor to convert from pounds of IFQ to number of GAF. The GAF conversion factor will be recalculated annually based on the average size of GAF retained and reported to NMFS during the previous season. Quota share holders who also hold CHPs will be subject to the same reporting requirements and transfer limits as other halibut QS and CHP holders. NMFS will report the lengths and estimated weights of GAF harvested to the IPHC so any differences between converted GAF weight deducted from IFQ accounts and estimated GAF weight reported to NMFS may be incorporated into the following year's stock assessment (see also response to Comment 57).

*Comment 61:* The average weight of a charter-caught halibut in Area 3A was 15.2 lb in 2011. The average size in the Glacier Bay subarea of Area 3A was 35.9 lb. If GAF are created using the average fish size, it is much more likely that they will be used in subareas with larger than average fish sizes like Glacier Bay and Yakutat to maximize GAF "bang for the buck."

*Response:* According to the report cited by the commenter ([http://alaskafisheries.noaa.gov/npfmc/pdffdocuments/halibut/2c3a\\_adfg2011estimates0912.pdf](http://alaskafisheries.noaa.gov/npfmc/pdffdocuments/halibut/2c3a_adfg2011estimates0912.pdf)), of the 184,293 fish harvested by charter vessel anglers in Area 3A in 2011, only 601 of those fish (0.3 percent) were harvested in the Glacier Bay subarea. The Yakutat subarea is the subarea closest to Glacier Bay in Area 3A. Combining the Glacier Bay and Yakutat subareas only accounts for 2 percent of the total number of fish harvested in Area 3A. GAF may be used in these areas, but its use is likely limited given the relatively small amount of harvests in these areas. The Glacier Bay and Yakutat subareas are far removed from the main charter fishing communities of the Kenai Peninsula and Prince William Sound. It is unlikely that charter operators would travel hundreds of miles from the northern Gulf of

Alaska to Glacier Bay or Yakutat to maximize the size of fish harvested for each GAF given the costs of fuel, time required for transit, and difficulty in obtaining clientele in those locations. Charter operators using GAF in Glacier Bay and Yakutat could benefit from the use of average weight in Area 3A when determining the amount of IFQ required for each GAF. The use of average weight by IPHC regulatory area for GAF could be reviewed by the Council and NMFS, and revisions could be incorporated in a future action, if warranted.

*Comment 62:* A charter vessel angler should be able to buy as many GAF as he or she would like to catch if the angler is willing and able to pay for GAF.

*Response:* See the response to Comment 64 for a description of the limits on GAF use for guided anglers. GAF is intended to allow CHP holders to provide charter vessel anglers with halibut harvest opportunities that are equivalent to, but not more than, those provided to unguided anglers (see section 2.5.12.7 of Analysis). In recommending GAF use limits, the Council balanced its objective to provide an opportunity for the charter halibut fisheries in Area 2C and Area 3A to increase fishing opportunities when the charter allocation may be constrained with its objective to stabilize the proportions of harvestable halibut available to the commercial and charter fisheries at all levels of halibut abundance.

NMFS notes that the Council's recommendation of GAF use limits for charter vessel anglers is also consistent with the Halibut Act requirement that allocations of fishing privileges must be carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of halibut fishing privileges (Halibut Act, at 16 U.S.C. 773c(c)). A charter vessel angler may purchase GAF for use over several days if he or she wishes to retain multiple daily bag limits.

*Comment 63:* When does a GAF become a sport caught fish, before or after it has been landed? Selling or purchasing sport caught fish is illegal.

*Response:* Halibut IFQ becomes GAF when NMFS approves a transfer between an IFQ permit holder and a charter halibut permit holder. As described in the response to Comment 44, regulations at § 300.61 of this final rule define GAF as halibut transferred within a year from an Area 2C or Area 3A IFQ permit holder to a GAF permit that is issued to a person holding a charter halibut permit for the corresponding area. A GAF permit authorizes a charter vessel angler to

retain GAF in the IPHC regulatory area specified on a GAF permit during a charter vessel fishing trip authorized by the charter halibut permit. When a GAF is retained by a charter vessel angler, it will be recorded in the saltwater charter logbook and on the GAF permit log as GAF harvested, but will not accrue toward charter harvest because GAF is a use of IFQ and has been deducted from the IFQ permit holder's account. However, because GAF is harvested in the charter halibut fishery, the charter vessel angler harvesting GAF must comply with all applicable sport fishing regulations. When a charter vessel angler retains GAF, the angler is not buying a sport-caught fish from the charter operator because it was never the charter operator's fish to sell. The charter vessel angler is allowed to retain GAF under authority of the charter halibut permit holder's GAF permit, as long as all applicable reporting and marking requirements are met (see regulations at § 300.65(c)(5) and § 300.65(d)). NMFS acknowledges that charter operators are likely to charge charter vessel anglers retaining GAF a fee in order to recover the costs of leasing GAF from halibut QS holders (see response to Comment 44). Any fee paid to the charter operator by the charter vessel angler represents purchase of a federally authorized privilege of retaining a sport-caught halibut in addition to that allowed under charter size or bag limit restrictions in place at the time. Current prohibitions on selling sport-caught fish are not modified by this final rule. Sale, trade, or barter of all sport-caught halibut by a charter vessel angler is prohibited under State of Alaska regulations and section 25(6) of the IPHC annual management measures.

*Comment 64:* If I am fishing in an area that has a one-fish bag limit with a reverse slot limit (e.g., Area 2C), does the second fish have to meet the regulations of the one-fish bag limit, or can the second fish be of any size? If I am fishing in an area that has a limit for charter vessel anglers of two fish per day with a size limit on one of those fish, would GAF be required if the first fish caught was over the limit and the second fish was under the size limit? In this same scenario, what would prevent trading of fish on the deck of the charter vessel to circumvent restrictions on the second fish? And what is to stop anglers from swapping fish to make sure GAF provisions are not needed for any of the anglers on the boat?

*Response:* As stated on page 39136 of the proposed rule, charter vessel anglers may use GAF to retain halibut up to the limit for unguided anglers when the



charter management measure in place would limit charter vessel anglers to a more restrictive harvest limit. In other words, a charter vessel angler may retain a halibut as GAF that exceeds the daily bag limit and length restrictions in place for charter anglers only to the extent that the angler's halibut retained under the charter halibut management measure plus halibut retained as GAF do not exceed daily bag limit and length restrictions imposed on unguided anglers. How GAF may be used depends on the charter management measures and the measures in place for unguided anglers.

In the first scenario above and assuming an unguided daily bag limit of two fish of any size, a charter vessel angler could keep one halibut under the reverse slot limit and use one GAF to keep a second halibut of any size, or could use two GAF to keep two halibut of any size in a day. In the second scenario, the angler would not need to use GAF. If the charter vessel angler wanted to keep two fish over the size limit, one GAF could be used. Table 5 of the proposed rule gives additional examples of potential GAF uses.

Trading fish among anglers on the deck of a charter vessel to circumvent bag limits and GAF use requirements would be a violation of IPHC annual management measures. Paragraph 25(3) states that "any halibut brought aboard a vessel and not immediately returned to the sea with a minimum of injury will be included in the daily bag limit of the person catching the halibut" (78 FR 16423, March 15, 2013). Plainly stated, a fish belongs to the person who caught it and applies toward that person's daily bag limit.

*Comment 65:* Suppose a charter operator buys a large vessel, stacks multiple CHPs on it, and buys GAF for resale to customers. With GAF assigned to individual CHPs, he could easily find himself holding plenty of GAF but unable to sell it because the angler wanting to buy the GAF is fishing on a stacked CHP with no associated GAF. How is this situation handled under the CSP? It would make sense to assign GAF to a CHP holder that can be used on any CHP the holder may control.

*Response:* The comment refers to § 300.65(c)(5)(iii)(A)(4) of this final rule, which specifies that a GAF permit is assigned to only one CHP held by the GAF permit holder. Charter halibut permit holders requesting GAF will be required to specify the CHP to which the GAF permit would be assigned on the application for transfer between IFQ and GAF. The assignment between a GAF permit and a CHP could not be changed during the year. NMFS is

implementing this requirement to facilitate enforcement and recordkeeping and reporting for GAF.

As described in the proposed rule for the CSP, GAF permit holders will be required to hold a sufficient number of GAF for charter vessel anglers to retain halibut in excess of the charter angler limit and up to limits in place for the unguided sport halibut fishery for that area. In other words, charter operators will be required to already possess the GAF prior to the fish being caught. GAF could not be obtained after the angler retained a fish. GAF permit holders who do not hold sufficient GAF to cover retained halibut by charter vessel anglers in excess of the CSP restriction may not allow anglers to retain those GAF. The charter operator will be required to have the GAF permit and the CHP to which it is assigned on board the vessel on which a charter vessel angler retains GAF, and to present the permits if requested by an authorized enforcement officer (see regulations at § 300.65(c)(5)(iv)(A) and (B) and § 300.65(c)(5)(iii)(A)(5)). NMFS believes that these requirements are necessary to enable enforcement personnel to verify that all charter anglers on board catching and retaining halibut are authorized to do so by the CHP and GAF permits on board the vessel.

Allowing CHP holders to use a GAF permit in conjunction with any CHP on board the vessel, as suggested by the commenter, could make it difficult for enforcement officers to verify that the CHP and GAF permits are valid and all anglers are authorized to retain the halibut included in their daily bag limit. This is particularly likely if multiple CHPs are used on the same vessel or if the vessel operator is not the CHP holder. NMFS also believes that requiring a GAF permit to be assigned to only one CHP held by the GAF permit holder will facilitate GAF recordkeeping and reporting for CHP and GAF permit holders. Because GAF permit holders must have sufficient GAF on their permit prior to the charter vessel fishing trip to cover GAF retained, assigning one GAF permit per CHP will assist the holder with GAF account tracking and reporting in the ADF&G saltwater charter logbook and in the GAF electronic reporting system (see regulations at § 300.65(d)(4)(ii)(B) and § 300.65(d)(4)(iii)). It will be up to the CHP holder to decide how best to distribute GAF and charter vessel anglers among permits to ensure that GAF is available when necessary.

*Comment 66:* Why are GAF assigned to an individual charter halibut permit and not to the person who holds the

CHP? How can someone who rents a CHP use GAF on the rented CHP?

*Response:* GAF are assigned to an individual CHP and not the CHP holder because the CHP holder is not necessarily the guide on board the charter vessel using the CHP. A person may hold multiple CHPs that are used on more than one vessel. Just as a CHP holder may allow someone else to use their CHP on a charter vessel fishing trip, he or she may receive a transfer of IFQ as GAF and also let the person using the CHP use the GAF permit assigned to that CHP. See also response to Comment 65.

*Comment 67:* GAF benefits larger charter operations who can amortize the expense of leased halibut over a large customer base to gain a competitive advantage over smaller operators whose small client base does not support such expenditure.

*Response:* The Council recommended, and this final rule implements, GAF transfer limits (also called "use caps") on the number of GAF that a CHP holder may receive as well as the amount of IFQ that a halibut QS holder may transfer as GAF. The Council recommended different GAF limits for CHPs with different numbers of angler endorsements to balance the GAF needs of different types of charter operations with its objective to maximize the opportunity for all charter operators to acquire GAF. Because holders of CHPs endorsed for more than six anglers are likely to be larger charter operations, the Council was concerned that these larger charter operations would have more financial resources to acquire GAF than smaller operations unless limits were established. These transfer limits are intended to prevent an entity from obtaining an excessive share of the GAF fishing privileges.

IFQ holders in Area 2C will be limited to transferring up to 1,500 lb (680.4 kg) or 10 percent, whichever is greater, of their initially issued annual halibut IFQ for use as GAF. In Area 3A, IFQ holders can transfer up to 1,500 lb or 15 percent, whichever is greater, of their initially issued annual halibut IFQ for use as GAF. Because IFQ holdings are generally larger in Area 3A than in Area 2C, IFQ holders in Area 3A will be able to transfer up to 15 percent of the IFQ as GAF. Restricting Area 3A IFQ holders to leasing up to 10 percent of their IFQ holdings could limit the amount of IFQ available for lease as GAF (section 2.5.12.2 of the Analysis). Allowing Area 3A IFQ holders to lease 15 percent of their IFQ holdings as GAF would provide Area 3A IFQ holders more flexibility in determining whether to lease IFQ as GAF and could provide

more GAF to the Area 3A charter halibut fishery.

Under the CSP no more than a total of 400 GAF will be assigned during one year to a GAF permit assigned to a charter halibut permit that is endorsed for six or fewer anglers. No more than a total of 600 GAF will be assigned during one year to a GAF permit assigned to a charter halibut permit endorsed for more than six anglers. A person who holds both halibut IFQ and a charter halibut permit and would like to transfer that IFQ to GAF will be subject to the same transfer restrictions. The Council recommended different GAF limits for charter halibut permits to balance the GAF needs of different types of charter operations with its objective to maximize the opportunity for all charter operators to acquire GAF. Because holders of charter halibut permits endorsed for more than six anglers are likely to be larger charter operations, the Council was concerned these larger charter operations would have more financial resources to acquire GAF than smaller operations unless a limit was placed on the number of GAF that could be assigned to a charter halibut permit. NMFS agrees that the limit for assigning GAF to charter halibut permits accommodates the GAF needs of different charter operation types and promotes the Council's objective to offer all charter businesses the opportunity to lease IFQ as GAF.

Finally, as noted in Comment 68, smaller charter operations with fewer angler endorsements are actually entitled to more GAF per angler endorsement than larger operations with more angler endorsements per CHP.

*Comment 68:* The limits on GAF transfers discriminate against larger charter operations with more angler endorsements. Whereas a CHP endorsed for six anglers may lease up to 400 GAF in a season (67 GAF per angler endorsement), a CHP endorsed for 12 anglers is limited to only 600 GAF (50 GAF per angler endorsement). It would be fairer to limit CHP holders to a fixed number of GAF per angler endorsement.

*Response:* See response to Comment 67. The Council chose GAF transfer limits to prevent any business from obtaining an excessive share of GAF fishing privileges and to maximize the opportunity for all charter operations to acquire GAF. Revisions to these GAF transfer limits would need to be approved by the Council after the GAF program has been implemented.

*Comment 69:* How does a charter angler know that the charter guide is authorized to allow anglers to retain GAF? If the guide does not have GAF,

and a charter angler retains a fish as GAF, who would be held responsible?

*Response:* The charter vessel guide and the charter vessel angler are both responsible for ensuring that sufficient GAF are available on the GAF permit for harvest. Current regulations at § 300.66(b) provide that it is unlawful for any person to fish for halibut except in accordance with the catch sharing plans and domestic management measures implemented under §§ 300.63, 300.65, and 300.67. This applies to "any" person, including a charter vessel angler. The GAF use restrictions at § 300.65(c)(5)(iv)(F) in the final rule state, "the charter vessel guide must ensure that each charter vessel angler complies with (c)(5)(iv)(A) through (E) of this section." Paragraph § 300.65(c)(5)(iv)(B) specifies that the number of GAF retained on board a vessel cannot exceed the number of unharvested GAF in the GAF permit holder's GAF account at the time of harvest. The charter vessel guide is also responsible for ensuring that clients do not exceed the sport fishing daily bag limit in effect for unguided anglers or the daily possession limits, among other requirements. GAF use restrictions and GAF reporting requirements are described in detail in the preamble to the proposed rule under the section entitled "IV. Guided Angler Fish (GAF)."

*Comment 70:* How will NMFS track transfers of IFQ and GAF and what will happen to unused GAF?

*Response:* NMFS described in detail in the preamble to the proposed rule under the section entitled "IV. Guided Angler Fish (GAF)" how transfers of IFQ and GAF will be tracked. In summary, the system currently in place for tracking halibut IFQ transfers will be modified to include GAF. Voluntary and automatic returns of GAF to IFQ were also explained in the proposed rule. Unused GAF may be voluntarily returned to the IFQ holder in August each year, or it will be automatically returned 15 days before the end of the commercial halibut fishing season (see regulations at § 300.65(c)(5)(i)(C) and § 300.65(c)(5)(ii)(B)(5)(i)).

*Comment 71:* How will GAF be monitored? What checks and balances will be in place to insure the rules are followed? Will auditors be hired to oversee the GAF program? Who is going to do the GAF enforcement? Where in the analysis can we find estimates of the cost of GAF enforcement? Are funds budgeted for GAF enforcement?

*Response:* A detailed description of how GAF will be monitored and the checks and balances that will be put in place to allow adequate enforcement

was given in the preamble to the proposed rule under the section entitled "IV. Guided Angler Fish (GAF)" and is not repeated here.

As stated in section 2.5.12.2 of the Analysis, it is not possible to predict the number of GAF that will be made available for lease each year; therefore, it is difficult to predict how much GAF administration and enforcement will cost. NMFS does not anticipate needing to hire additional staff to administer and enforce the GAF program. NMFS Restricted Access Management Program will administer the GAF program; handling transfers of IFQ, issuing permits, and managing the electronic data submitted by GAF permit holders. The NOAA Office of Law Enforcement will be primarily responsible for enforcing the GAF program. Funds are not explicitly budgeted for GAF administration and enforcement, but costs incurred by NMFS related to the GAF program will be subject to cost recovery for the halibut and sablefish IFQ Program, as described on page 39143 of the proposed rule and in regulations at § 679.45.

Because GAF is a use of IFQ, the existing reporting system for the Halibut IFQ Program administered by NMFS Restricted Access Management Program will be modified to allow tracking of IFQ transfers and reporting of GAF. There are some costs associated with developing the regulations to implement and enforce GAF and the software needed to issue GAF permits and electronically report GAF. These costs will be recovered through IFQ cost recovery fees, i.e., fees assessed and collected on IFQ equivalent pounds harvested and paid by the IFQ holder. The fee percentage has rarely exceeded 2 percent and may not exceed 3 percent of the ex-vessel value of halibut landings. Additional information about cost recovery for GAF was given in the preamble to the proposed rule in the section entitled, "G. Cost Recovery for GAF."

*Comment 72:* Areas 2C and 3A are adjacent to one another at the south end of Alaskan IPHC regulatory areas. Why should halibut and sablefish QS holders in areas west of 2C and 3A pay for GAF enforcement if they are never going to receive any benefit from it? Can NMFS separately track GAF enforcement costs?

*Response:* Section 2.6.1.2 of the Analysis describes how NMFS will incorporate GAF into the existing cost recovery program for the halibut and sablefish IFQ fisheries. Under the current program, IFQ permit holders incur a cost recovery fee liability for every pound of IFQ halibut and sablefish that is landed under his or her



IFQ permit(s). This final rule implements regulations at § 679.45 specifying that an IFQ permit holder is responsible for cost recovery fees for landings of his or her IFQ halibut and sablefish, including any halibut landed as GAF that are derived from his or her IFQ accounts. The costs of administering and enforcing GAF that will be recoverable by NMFS were discussed in the response to Comment 71 and in the proposed rule for the CSP. For each IFQ permit, NMFS will determine the dollar amount of the fee due by multiplying the annual IFQ fee percentage (3 percent or less) by the value of all landed IFQ and GAF derived from the permit holder's IFQ permit(s). If the permit holder has more than one IFQ permit, the total amounts of each permit are summed to determine his or her total cost recovery fee.

The cost recovery fee is paid by both halibut and sablefish IFQ permit holders. The structure of the IFQ cost recovery program does not facilitate applying different fee percentages to IFQ holders in different areas, nor does it allow halibut and sablefish IFQ permit holders to be charged different fee percentages. Any increase in the cost recovery fees from implementation of the GAF program will be borne by all halibut and sablefish IFQ permit holders.

Halibut and sablefish IFQ permit holders pay the same IFQ fee percentage because typically halibut and sablefish are harvested by the same vessels and IFQ permit holders. NMFS does not divide costs of administering and enforcing the IFQ Program at a species or area level. For example, NMFS does not track the time spent answering questions about the IFQ Program from people holding Area 2C QS, versus people holding Area 3B QS. Establishing separate costs for halibut and sablefish IFQ holders for each area and species would result in higher overall costs for all IFQ holders because it would require more costly, inefficient, and administratively burdensome tracking and monitoring provisions. Following implementation of the GAF program, NMFS will calculate the overall enforcement and management costs of the IFQ and GAF programs combined, but will not differentiate costs by species or area.

As discussed throughout the Analysis and in the response to Comment 1, NMFS expects that the CSP will benefit halibut IFQ permit holders in Areas 2C and 3A by stabilizing the proportions of harvestable halibut available to the commercial and charter fisheries at all levels of halibut abundance and base both fishery allocations on the annual

CCL. Halibut IFQ permit holders in Areas 2C and 3A will also have the opportunity to lease halibut IFQ as GAF to CHP holders. While the Council and NMFS cannot project how much IFQ will be leased by the charter sector, the ability to lease IFQ as GAF to CHP holders is expected to benefit IFQ holders in those areas, by allowing them additional flexibility when developing their annual harvest strategies.

NMFS acknowledges that QS halibut holders in areas west of Areas 2C and 3A (Areas 3B and 4) and sablefish QS holders will realize an incremental increase in cost recovery fees following implementation of the GAF program, but will not benefit from leasing IFQ to the charter sector. NMFS anticipates that the cost recovery fee for these QS holders will increase by a relatively small amount because the additional costs of administering and enforcing GAF are expected to be a relatively small portion of the total costs to NMFS of administering and enforcing the IFQ and GAF programs. NMFS received no comments from halibut QS holders in Areas 3B and 4 or sablefish QS holders opposing NMFS' proposed method for recovering fees associated with administering and enforcing GAF.

*Comment 73:* Why should any quota share holder who does not rent out GAF pay for GAF enforcement? At year's end NMFS will know exactly which QS holders leased GAF and how much it cost to enforce GAF. Why not require the QS holders who rent GAF pay for its enforcement?

*Response:* As described in the response to Comment 72, NMFS does not expect a substantial increase in fees to QS holders as a result of the GAF program. The method of assessing cost recovery fees proposed by the commenter would require a substantial change to the NMFS' current method of tracking management and enforcement costs for the IFQ Program and would result in higher cost recovery fees for QS holders than the method implemented by this final rule. Additionally, NMFS did not receive comments from QS holders in opposition to NMFS' proposed method for incorporating GAF into the existing cost recovery program for the IFQ fisheries. See Comment 71 for a description of how fees are tracked and assessed for the IFQ Program.

*Comment 74:* On page 39142 of the proposed rule, in the section describing GAF reporting requirements, NMFS notes that the Council recommended that GAF permit holders be required to allow ADF&G and IPHC sampling personnel access to landed halibut on private property for scientific sampling. The IPHC supports the intent of

sampling GAF at all locations, because of the strong likelihood that GAF will have a different size distribution than the non-GAF harvest, and scientific sampling is the best method to collect those data. The proposed rule preamble notes that the impacts of requiring such access are unknown and that it is not currently being proposed. The IPHC staff encourages an expedient resolution of the issue and the inclusion of the necessary access provisions, so as to have an acceptable vehicle for collecting size distribution data on the exchange of halibut between the sectors.

*Response:* NMFS acknowledges the comment. NMFS is still considering how to best implement the scientific sampling aspect of the CSP while providing the public with predictability regarding the scope of inspections by sampling personnel. NMFS anticipates proposing this requirement in a separate rulemaking after completing its evaluation.

*Comment 75:* We suggest that unused GAF be returned to IFQ permit holders one month prior to the end of the season rather than 15 days prior, as proposed. The Analysis shows that 96–98 percent of charter harvest takes place by August 31; therefore, there is little reason to retain GAF in the charter sector into October. Weather conditions in November can often prevent commercial harvest, and an IFQ holder may have difficulty harvesting unused GAF that is not returned until 15 days prior to the end of the commercial fishing season.

*Response:* No changes were made from the proposed rule. NMFS agrees that most GAF will likely be used by September each year and expects that some unused GAF will be voluntarily returned to the IFQ holder as provided for in regulations at § 300.65(c)(5)(ii)(A)(3) and § 300.65(c)(5)(ii)(B)(5)(i). If an IFQ holder receives a return of GAF after the automatic return date and cannot harvest the IFQ before the close of the commercial fishery, that unused IFQ will be considered an underage in the next year, consistent with underage provisions at § 679.40(e). This underage would result in a greater allocation of IFQ in the following year.

The Council recommended that NMFS automatically return GAF 15 days prior to the end of the commercial halibut fishing season in order to maximize the opportunity for charter operators to use GAF throughout the charter fishing season while providing halibut QS holders with an opportunity to harvest unused and returned GAF before the end of the commercial fishing season. NMFS agrees that it is possible that the change in automatic return date

from 15 days to one month prior to the end of the commercial fishing season suggested in the comment would not be likely to impact the ability of charter operators to use GAF based on historic harvest patterns. However, NMFS does not consider it is appropriate to make this change from the proposed to final rule because the Analysis and the record for Council development of the CSP supports an automatic return date of 15 days prior to the end of the commercial fishing season. The commenter could suggest the proposed change to the Council for its consideration of GAF program changes in the future.

*Comment 76:* GAF provides the opportunity for anglers to take a trophy fish in areas with size restrictions in place. Trophy fish are expensive to mount; many anglers choose instead to mount just the tail. Whether they mount the whole fish or just the tail, snipping the tail fin ruins the mount. Why was this not considered when GAF identification was raised as an issue?

*Response:* No changes were made from the proposed rule on the basis of this comment. This final rule implements a requirement for charter vessel guides to immediately remove the tips of the upper and lower lobes of the caudal (tail) fin to mark all halibut caught and retained as GAF (see § 300.65(c)(5)(iv)(G)). Many saltwater fish, including halibut, that are professionally mounted are made from reproductions, rather than molded casts of the original or traditional skin mounts. NMFS suggests that if the guide or angler were to photograph the dorsal and ventral sides of the fish or tail before clipping it, the taxidermist would be able to recreate the detail in the reproduction.

NMFS did not explicitly consider the issue of the effects on taxidermy when determining how to mark GAF to distinguish them from other halibut retained by a charter vessel angler, nor did anyone raise it as a significant concern during public testimony to the Council. Likewise, NMFS received more than 4,700 comments on the proposed rule (most of these were from anglers and charter businesses) and only one commenter raised this concern. The Council may consider changes to the GAF marking requirement in the future if it determines the impact is negatively impacting the ability of anglers to mount GAF halibut.

*Comment 77:* What prevents a charter operator from clipping the fins of all the fish in his box? There is no rule against this, only a requirement to clip GAF. What happens if a fish is retained that has a deformed (pre-clipped) tail fin? Is it a GAF or a sport caught fish?

Uniquely numbered GAF tags would more positively identify a GAF than clipping a fin.

*Response:* NMFS agrees that the regulations do not contain a prohibition against clipping the tail fins of retained halibut; however, it is not clear why a charter vessel guide would do this. NMFS anticipates enforcement personnel inspecting halibut retained by charter vessel anglers with the tips of the upper and lower lobes of the caudal (tail) fin removed could be considered GAF. Enforcement personnel would have to consider the specific amount of clipped halibut on board and other information (e.g., GAF permit logs and saltwater charter logbooks) on a case-by-case basis.

NMFS does not expect that enforcement personnel would have any difficulty distinguishing a marked GAF from a halibut with a deformed or pre-clipped tail because a freshly clipped tail fin lobe would be visibly different than a healed-over wound or deformity. In addition to removing the tips of the upper and lower lobes of the tail fin, this final rule implements regulations requiring charter vessel guides to immediately record the date and the length of the GAF retained on the GAF permit log, providing a second means for enforcement agents to verify which fish are GAF (see § 300.65(d)(4)(iii)(A)). The Council and NMFS considered issuing tags to identify GAF, but determined that they would be burdensome to charter operators, could easily be lost, would delay transfers of IFQ to GAF, and would likely end up as marine debris if the carcass is discarded at the dock. Removing the tips of the tail fin lobes was determined to be the least burdensome option for marking and identifying GAF.

#### *Fishery Management Measures*

*Comment 78:* The IPHC's adoption of management measures to implement domestic catch allocations such as the sector allocations specified in the CSP rule violates the Halibut Act and the Administrative Procedure Act. The public lacks the opportunity to comment with the current approach to setting annual charter harvest restrictions for Areas 2C and 3A because the annual management measures are not first published in a proposed rule with a well-defined comment period. The exclusion of a public comment period violates the Administrative Procedure Act. The Area 2A CSP includes a public comment period. Additionally, at three points in the process for setting annual management measures, the recommended measures

could be overruled and replaced with different measures.

*Response:* NMFS provided an opportunity for the public to comment on the CSP proposed rule. This rule does not implement any annual management measures designed to limit charter harvest to an annual sector allocation. The CSP contemplates that the Council will continue the process by which it develops charter fishery management recommendations for IPHC consideration. The CSP also contemplates that the IPHC will continue its practice of adopting annual management measures necessary to maintain charter halibut harvest to its annual harvest allocation, and submit those measures to the United States for acceptance. IPHC annual management measures that are accepted by the Secretary of State with concurrence of the Secretary of Commerce are published in the **Federal Register** as specified by 50 CFR 300.62. NMFS notes that the Administrative Procedure Act's notice-and-comment requirements have been inapplicable to past publications of annual management measures under the foreign affairs functions exemption (5 U.S.C. 553(a)(1)). Determinations regarding applicability of the exemption are made on a case-by-case basis.

*Comment 79:* The guided harvest is currently managed within its GHL allocations in Area 2C and Area 3A using the same tools proposed under the CSP; therefore, the CSP is not necessary.

*Response:* NMFS acknowledges that charter harvests have been managed within the GHL since 2011 in both areas. However, as noted in response to Comment 2, the GHL is not appropriately responsive or adaptable to changes in halibut abundance. The Council has determined that the allocations under the CSP will better meet the Council's objectives of establishing a comprehensive management program for the charter halibut fisheries in Area 2C and Area 3A, with sector allocations that float with varying levels of halibut abundance and that balance the differing needs of the charter and commercial sectors across a range of halibut abundance.

*Comment 80:* The annual process for setting annual charter harvest restrictions is similar to the process undertaken for the sport halibut fisheries in Area 2A off of the Washington, Oregon, and California coasts.

*Response:* NMFS believes that the commenter is referring to the cooperative management approach taken by NMFS and the IPHC in Area

2A and acknowledges the comment. See also response to Comment 78.

*Comment 81:* The process outlined in the CSP to annually recommend charter management measures to the IPHC for implementation through IPHC regulations is preferable to the matrix proposed in 2011, which was inflexible and prescriptive. This is the most effective process and will minimize charter overages of its sector allocation, while maintaining the charter sector's and Council's objective to specify the management measures pre-season with no inseason changes or closures.

*Response:* NMFS agrees. The Council determined that the process for setting annual harvest restrictions for the charter sector endorsed by the CSP will more effectively meet its management objectives than the method for determining charter halibut fishery harvest restrictions proposed by NMFS in 2011 (76 FR 44156, July 22, 2011). The Council's rationale for endorsing a process to annually recommend charter management measures to the IPHC for implementation through IPHC regulations is discussed in section 2.5.3 of the Analysis and in the response to Comment 78.

*Comment 82:* Area 2C and Area 3A should have the same charter harvest restrictions so the charter operators and charter anglers in one area do not have an advantage over those in the other.

*Response:* The Council considered that Area 2C and Area 3A are distinct from each other in terms of halibut abundance trends and charter fishing effort when it recommended the CSP (see the proposed rule for the CSP and section 1.6.7 of the Analysis). The Council and NMFS are committed to using area-specific harvest restrictions that are tailored to the circumstances of the particular area.

*Comment 83:* The majority of the 4,740 comments received expressed opposition to a one-fish daily bag limit in Area 3A. If a one-fish bag limit were implemented, many people expressed that they would not come to Alaska to fish. Some commenters said they would go to Canada to fish for halibut instead. Some people were concerned that a one-fish bag limit would lead to high-grading and higher wastage mortality because more fish would be caught and released as anglers try to catch and retain the biggest fish possible.

*Response:* The CSP implemented by this final rule does not implement a one-halibut per day bag limit for Area 3A charter vessel anglers. The CSP changes the allocation between the charter and commercial sectors, but does not implement specific harvest restrictions for charter vessel anglers

(see response to Comment 1). In developing any future recommendations for charter management measures to the IPHC, the Council will consider the anticipated impacts of alternative management measures on angler demand. Additionally, the Council intends to develop and recommend management measures that limit charter harvest to its fishery allocation while ensuring that the charter industry can provide anglers with the "best" fishing experience (see section 1.6.7 of the Analysis).

The CSP Analysis recognizes that allocations to the charter sector may be constraining at current low levels of halibut abundance. To address this possibility, the Council recommended the GAF program to meet the needs of the charter halibut fisheries in Areas 2C and 3A and provide flexibility for participants in the commercial and charter halibut fisheries. Under the GAF program, charter vessel anglers will have the opportunity to harvest additional halibut when the bag limit for charter anglers is more restrictive than for unguided anglers. Moreover, a one-halibut per day bag limit has been in place for charter vessel anglers in Area 2C since 2009. This reduced bag limit may have resulted in negative economic impacts for some Area 2C charter operations from reduced angler demand. However, the role of that bag limit in reduction in angler demand in comparison to other factors, such as large scale economic conditions, is not known (see section 2.6.1.1 of the Analysis). NMFS does not have information to confirm whether the one-halibut per day bag limit in Area 2C has caused some charter anglers to choose to fish in Area 3A or in other areas in Alaska or Canada.

*Comment 84:* Unguided and guided anglers should have the same bag and size limits. It is unfair that unguided anglers are not restricted by an allocation. The CSP discriminates against charter anglers. Charter anglers should not be managed differently than unguided anglers simply because they choose to hire someone else to drive the boat. Having stricter bag limits for guided anglers is unfair to those anglers who do not have their own boat, are coming from out-of-state and cannot bring their own boat, or are hiring a guide for other financial, health, safety, or other practical reason.

*Response:* The Council and NMFS have determined that this rule is fair and equitable to halibut fishermen (see the response to Comment 2). The Halibut Act does not require that different sectors of the halibut fisheries be managed using the same tools and

restrictions. NMFS notes that while the Council has not specified a halibut allocation for the unguided recreational fisheries in Areas 2C and 3A, total harvest by unguided anglers is limited by the current bag limit under IPHC regulations, which is two fish of any size per day (78 FR 16423, March 15, 2013).

The charter halibut fishery is the second largest, in terms of volume of halibut harvested, after the commercial fishery in Areas 2C and 3A. The unguided sport fishery has the third largest harvest in both areas (see section 1.7.1.7 of the Analysis). Of these three harvesting sectors, the charter halibut fishery has demonstrated growth in participation over time while the commercial and unguided recreational sectors have declined or remained relatively steady. This information was in the Analysis considered by the Council and the Secretary of Commerce when taking this action. The Council's objective for the CSP is to address the ongoing allocation conflicts between the commercial and charter halibut fisheries, not to restrict unguided anglers.

The commenters' concerns about safety are addressed in the response to Comment 86.

*Comment 85:* Charter anglers should be managed differently than unguided anglers because the success rates for retained halibut are higher for a charter angler than an unguided angler. This difference in effort and impacts should be accounted for in management.

*Response:* The Council and NMFS agree that different management programs for charter vessel anglers and unguided anglers in Area 2C and Area 3A meet the Council's management objectives for recreational halibut fisheries in those areas. NMFS does not have information to confirm the commenter's assertion that success rates for retained halibut are higher for a charter angler than an unguided angler. See also response to Comment 84.

*Comment 86:* The differential bag limit for guided and unguided anglers compromises anglers' safety by encouraging more anglers to fish without the expertise of a guide. Anglers that would normally prefer to hire a guide for increased safety might choose to fish unguided instead, so that they may take advantage of the more liberal bag limit for unguided anglers. Differential bag limits will likely increase the number of illegal or unlicensed charter operations.

*Response:* NMFS is aware of no information demonstrating that this rule will create new safety risks. While it is possible that differential bag limits may

create incentives for anglers to substitute unguided fishing for guided fishing, unguided fishing harvest estimates decreased from 2009 to 2011 after a one-fish bag limit was implemented in Area 2C in 2009 (see section 1.7.1.7 of the Analysis). If the one-fish bag limit was causing anglers to shift to more unguided angling, NMFS would expect to see an increase in unguided harvest estimates. NMFS notes that changes in the national economy also affect demand for charter vessel fishing trips, and may have also affected unguided halibut harvest since 2009 (see section 2.6 of the Analysis).

In its analysis of the potential effects of this rule the Council and NMFS found no safety concern. NMFS does not have the information to determine whether more restrictive halibut management measures for charter vessel anglers in Area 2C may have resulted in an increase in the number of anglers fishing for halibut without a guide. NMFS notes that the U.S. Coast Guard has not experienced an increase in search and rescue cases for recreational vessels in recent years, during which time the IPHC and NMFS implemented more restrictive bag limits for guided anglers than unguided anglers in Area 2C.

If differential bag limits are implemented in Area 3A under the CSP, some charter vessel anglers may choose to substitute unguided fishing for guided fishing to maintain a more liberal bag limit. These anglers may make arrangements to go fishing with friends or relatives, to patronize lodges and rentals with associated skiffs, or to patronize businesses providing access to supported (lodging, meals, instructions, and gear) fishing from unguided small boats. This latter business model is already present in Southeast Alaska and could expand to Area 3A in the future. Firms with this business model are likely to see an increase in demand for their product, and some guided firms may shift to this business model. This possibility is discussed in section 8.6 of the Analysis.

A potential shift from guided to unguided fishing within Area 2C and Area 3A focuses on one option available for guided anglers. While some may make this substitution, others may substitute activities in other regions, and those activities may be associated with their own risks which may be greater or less than those of guided charters. While the guided charter vessel fleet may have a good safety record on the water, travel to and from the fishing site is often done in small airplanes which, in Alaska, has inherent dangers. It is possible that some charter

vessel anglers may substitute activities with less overall risk considering all the elements involved in a guided charter fishing trip. The net effect of this action on risk when all elements are considered cannot be determined with the available information. Some of these businesses will be firms that formerly provided guide services, or that begin to offer guided and unguided services. These firms are likely to provide monitoring of, and support to, anglers despite the absence of a guide on board a vessel. Large proportions of resident and non-resident sport anglers already are involved in unguided sport fishing in Alaska, and unguided business models already are used to provide resident and non-resident access to halibut fishing opportunities.

*Comment 87:* Treat Alaska residents and non-residents differently in commercial and charter fishing regulations. Implement less restrictive limits for Alaska residents or prohibit out-of-state residents from owning charter businesses or fishing commercially for halibut in Alaska.

*Response:* The Halibut Act at 16 U.S.C. 773c(c) states that regulations developed by the North Pacific Fishery Management Council to govern the halibut fishery shall not discriminate between residents of different states. The regulations implemented by this action do not discriminate between residents of different states. Charter vessel anglers who receive sport fishing guide services from charter halibut permit holders affected by this rule also are not discriminated against on the basis of state of residence. Such anglers will have the same opportunity to participate in the Area 2C and Area 3A charter halibut fishery regardless of state residence. Regulations at § 300.65 implementing the CSP allocations to the commercial and charter halibut sectors and authorizing the transfer and use of halibut IFQ as GAF apply to all persons participating in the commercial and charter halibut fisheries in Areas 2C and 3A regardless of state of residence.

*Comment 88:* Skipper and crew should not be restricted from harvesting halibut on charter vessels. Halibut harvested by skipper and crew have historically been calculated as unguided sport fishing poundage and have not counted toward the GHL; therefore, prohibiting skipper and crew harvest will not reduce total charter harvest. Additionally, this prohibition will create an economic hardship for skippers and crew who would be required to take a separate trip to harvest fish for their own personal use.

*Response:* NMFS disagrees. Skipper and crew are required to record their

harvest in the ADF&G saltwater charter logbook and it counts as charter halibut harvested; therefore, prohibiting skipper and crew harvest will reduce total charter harvest or allow more of the charter harvest to be caught by charter vessel anglers. As discussed on page 39136 of the proposed rule, the Council recommended that NMFS implement this provision in the CSP to clarify that only halibut harvested by charter vessel anglers will be counted toward the CSP charter halibut fishery allocation. Charter operators, guides, and crew are not considered charter anglers under current Federal regulations, and NMFS does not consider it appropriate for halibut harvested by these persons to be counted toward the charter halibut fishery harvest. Additionally, halibut harvested by charter operators, guides, and crew are difficult for enforcement agents to distinguish from halibut caught by charter vessel anglers.

*Comment 89:* In its December 2011 motion, the Council instructed staff to initiate a discussion paper to analyze the prohibition on skipper and crew harvest during charter vessel fishing trips. In Appendix 3 of the resulting discussion paper, staff noted that restricting skipper and crew harvest was already part of the CSP and no further action was needed. Please provide an explanation why alternatives to the skipper and crew prohibition were not considered. Was the December 2011 motion amended? And if so, why was this not documented? The analysis did not look at the economic impact on skipper and crew and did not consider anything less draconian than an outright ban, even though other options exist.

*Response:* In its December 2011 motion, the Council recognized that there were management options available that were not included as part of the Halibut CSP preferred alternative (<http://alaskafisheries.noaa.gov/npfmc/PDFdocuments/halibut/HalCSPmotion1211.pdf>), and included restricting captain and crew retention of fish as one potential management measure to be considered in a discussion paper. The Council had overlooked that a prohibition on skipper and crew harvest was already part of the original motion for a CSP adopted in April 2008 (<http://alaskafisheries.noaa.gov/npfmc/PDFdocuments/halibut/HalibutCharterMotion408.pdf>). As chronicled in the resulting March 2012 discussion paper (<http://alaskafisheries.noaa.gov/npfmc/PDFdocuments/halibut/CSPDiscussionPaper312.pdf>), when it was brought to the Council's attention by Council staff that the prohibition on

skipper and crew harvest was already part of the CSP, the Council did not request further action or analysis of any other alternatives to an outright ban. These documents were all available on the Council Web site, so NMFS disagrees that this action was not documented.

Charter guides, operators, and crew have been prohibited from retaining halibut in Area 2C since 2009 (74 FR 21194, May 6, 2009). This final rule extends the provision to skipper and crew in Area 3A at § 300.65(d)(3). The economic impacts of prohibiting skipper and crew harvest during charter vessel fishing trips were discussed in section 2.5.12.12 of the Analysis and in the analysis for the rule that implemented the prohibition in Area 2C ([http://alaskafisheries.noaa.gov/analyses/halibut/area2c\\_charterhalibut\\_eairirfa0309.pdf](http://alaskafisheries.noaa.gov/analyses/halibut/area2c_charterhalibut_eairirfa0309.pdf)). Additional reasons for prohibiting skipper and crew harvest were given in the response to Comment 88.

*Comment 90:* I support prohibiting skipper and crew harvest during charter vessel fishing trips.

*Response:* NMFS acknowledges the comment.

*Comment 91:* I support the requirement that charter operators be required to retain halibut carcasses when a size limit is in place and the prohibition on using both a charter halibut permit and a Subsistence Halibut Registration Certificate (SHARC) on the same day.

*Response:* NMFS acknowledges the comment. This final rule does not change the carcass retention requirement at section 28(2)(b) of the IPHC annual management measures and implements the prohibition on using both a charter halibut permit and a SHARC on the same day at § 300.66(h).

*Comment 92:* The proposed rule includes a prohibition for individuals who hold both a charter halibut permit and commercial halibut IFQ from fishing for commercial and guided sport halibut on the same vessel and on the same day for enforcement purposes. We support this and previously had stated this practice should be prohibited by fishing trip, as different regulations apply. IPHC regulations currently prohibit possession of sport-caught halibut and commercial halibut on the same vessel at the same time, as they prohibit halibut caught in the sport fishery to be possessed on board a vessel with fish destined for commercial use or sale (IPHC annual management measures section 25(6)).

*Response:* NMFS acknowledges the comment. Under this final rule, a person is prohibited to fish for charter and

commercial halibut on the same vessel on the same day (see § 300.66(i)). This final rule will not prevent a person who holds both a charter halibut permit and commercial halibut IFQ from conducting charter operations and commercial operations on separate vessels on the same day. IPHC regulations prohibit possession of sport-caught halibut when “other fish or shellfish aboard said vessel are destined for commercial use . . .” These two regulations will keep sport-caught and commercial halibut separate to facilitate enforcement.

*Comment 93:* The final rule should clarify that charter clients cannot retain halibut in the same trip from Area 2C and 3A and clarify whether it is prohibited to fish in both areas or just to retain halibut.

*Response:* Regulations at § 300.66(v) (as redesignated by this rule) prohibit being an operator of a vessel in Area 2C and in 3A during one charter vessel fishing trip. Additionally, to fish in both areas on separate trips, an operator would need to possess a separate charter halibut limited access permit for each area. Only a few charter businesses hold CHPs in both areas. The Council did not recommend changes to this regulation under the CSP and the Analysis did not discuss the impacts of changing the regulations as suggested. NMFS is not making the requested change in this final rule.

*Comment 94:* The Charter Halibut Management Implementation Committee was formed too late to give adequate input on the CSP.

*Response:* The commenter misunderstands the purpose of the Charter Halibut Management Implementation Committee, which was formed to provide recommendations to the Council for annual management measures intended to limit charter harvest to the sector allocation while minimizing negative economic impacts to the charter fishery participants in times of low halibut abundance. The Charter Halibut Stakeholder Committee provided input on the CSP (see response to Comment 107).

#### *Recordkeeping and Reporting*

*Comment 95:* NMFS proposes to use ADF&G saltwater charter logbooks to account for charter harvest under the CSP. Previously, the statewide harvest survey (SWHS) was used to estimate charter halibut harvest. A conversion factor must be applied to accurately compare logbook and SWHS estimates. The purpose of a logbook conversion factor is to make meaningful comparisons of the GHL (status quo) to

the CSP allocation alternatives using a common metric.

NMFS compared logbook and SWHS harvest estimates from 2006 to 2010 to obtain this conversion factor. Explain why 2011 data were not used in calculating the conversion factor, even though the analysis contains graphical comparisons that included 2011 data.

Additionally, for Area 3A, NMFS inappropriately subtracted skipper and crew harvest from the CSP allocation alternatives. The status quo includes harvest by skipper and crew. The CSP charter allocations should not be reduced by skipper and crew harvest because those fish were available for harvest by charter vessel anglers under the GHL in years when skipper and crew were prohibited from retaining halibut.

*Response:* In April 2012, the Council amended its previous action on the CSP (<http://alaskafisheries.noaa.gov/npfmc/PDFdocuments/halibut/CSPmotion412.pdf>). In that motion, the Council adopted the unanimous recommendation of the Halibut Charter Management Implementation Committee and the Advisory Panel to use ADF&G saltwater charter logbooks as the primary data collection method. The Council recommended using an adjustment factor based on the five-year average (2006–2010) of the difference between the harvest estimates provided by the logbooks and the SWHS, with the adjustment factor reduced by the amount of harvest attributed to skipper and crew, to create new alternatives with adjusted allocation percentages. The adjustment factors were used to increase the allocations to the charter sector in Alternatives 3 and 5.

As discussed in Section 2.3.2.1 of the Analysis, one of the drawbacks of the SWHS is that harvest estimates are not available until September of the year following harvest; i.e., a SWHS estimate of 2011 charter halibut harvest was not available until September 2012. In April 2012, when the Council took action, the SWHS estimate for 2011 was not yet available, and so they made their decision based on the best available information at that time. Table 2–1 (p. 125) of the initial draft of the Analysis ([http://alaskafisheries.noaa.gov/analyses/halibut/drafthalibut\\_csp0912.pdf](http://alaskafisheries.noaa.gov/analyses/halibut/drafthalibut_csp0912.pdf)) does not include 2011 data in comparisons of logbook and SWHS harvest estimates. This was the version of the Analysis that was available at the time of Council action. The draft of the Analysis published with the proposed rule was updated to include the 2011 data after passage of the final motion (Table 2–2, <http://>

[alaskafisheries.noaa.gov/analyses/halibut/drafea\\_halibutcsp0613.pdf](http://alaskafisheries.noaa.gov/analyses/halibut/drafea_halibutcsp0613.pdf).

NMFS notes that the allocation alternative selected by the Council for Area 3A did not include a logbook adjustment.

*Comment 96:* Charter vessel guides are required by State of Alaska regulations to document the number of halibut caught and released by charter vessel anglers in the ADF&G saltwater charter logbook. This information will facilitate wastage estimation for separate accountability. The CSP should mandate in Federal regulations that charter vessel guides record the number of halibut released.

*Response:* No changes were made from the proposed rule. ADF&G has required that charter vessel guides record the number of halibut kept and released by charter vessel anglers since the saltwater charter logbook program began in 1998. NMFS anticipates that ADF&G will continue to require charter vessel guides to record the number of halibut released by charter vessel anglers. See also response to Comment 36 and Comment 37.

*Comment 97:* The final rule should clarify that regulations require the guide to enter the name and license number of each angler on board in the charter logbook before the charter trip begins. Those charter vessel anglers on board that have no plans to fish for halibut should be required to sign the logbook before the beginning of the trip. This would help enforcement agents clearly identify the number of anglers fishing for halibut compared to the angler endorsement on the charter halibut permit.

*Response:* No changes were made from the proposed rule. NMFS has determined that the recordkeeping and reporting regulations implemented by this final rule provide for effective monitoring and enforcement of halibut harvested by charter vessel anglers in Area 2C and Area 3A. Regulations at § 300.65(d)(4)(ii)(B)(6) require charter vessel guides to record in the ADF&G saltwater charter logbook the name and license number (if applicable) for each paying or non-paying charter vessel angler on board that will fish for halibut. Regulations at

§ 300.65(d)(4)(ii)(A) require only charter vessel anglers retaining halibut caught to sign the logbook data sheet on the line that corresponds to the angler's information. This signature requirement promotes accurate reporting of halibut retained by charter vessel anglers and facilitates enforcement of charter halibut harvest restrictions such as daily bag and size limits. This regulation has been in effect in Area 2C since 2009 (74 FR

21194, May 6, 2009), and this final rule extends the signature requirement to include charter anglers in Area 3A as part of the CSP in the event that additional harvest restrictions are implemented in that area.

*Comment 98:* Charter guides are currently required to provide a single statistical area location in logbooks where the majority of their catch occurs each day. Since charter guides often fish more than a single statistical area each day, the current requirement obscures the true spatial and temporal pattern of associated fishery mortality. This potentially limits fishery managers' ability to detect these underlying patterns. This inability to accurately attribute fishery mortality spatially is problematic for attributing halibut harvest within the waters of Glacier Bay National Park. We recommend that NOAA fishery managers consider the relative costs and benefits of more detailed, spatially explicit halibut harvest reporting that would require reporting fishing activity within the appropriate ADF&G six digit charter logbook areas, rather than a single statistical area for the entire day.

*Response:* No changes were made from the proposed rule on the basis of this comment. NMFS has determined that the data collected in the ADF&G saltwater charter logbook, aggregated at the level of IPHC regulatory area, provide the Council and the IPHC with information necessary to promote their stated conservation and management objectives for the Area 2C and Area 3A halibut fisheries.

It is NMFS' understanding that the National Park Service requires a special permit for charter vessels to operate within Glacier Bay National Park. If the National Park Service would like to obtain spatial and temporal halibut harvest data for charter vessels within Glacier Bay National Park, it could consider developing a logbook for charter operators in that area.

*Comment 99:* We support the GAF electronic reporting requirements and request that a "charter trip" be clearly defined to ensure reports are timely.

*Response:* No changes were made from the proposed rule. NMFS has determined that the GAF electronic reporting requirements implemented by this final rule promote timely reporting of GAF harvests in Area 2C and Area 3A. Regulations at § 300.61 define "charter vessel fishing trip" as the time period between the first deployment of fishing gear into the water from a vessel after any charter vessel angler is on board and the offloading of one or more charter vessel anglers or any halibut from that vessel. This rule implements

regulations at § 300.65(d)(4)(iii)(D) requiring a GAF permit holder to submit a GAF electronic report to NMFS by 11:59 p.m. (Alaska local time) on the last day of a charter vessel fishing trip in which a charter vessel angler retained GAF.

*Comment 100:* The requirement for charter vessel guides to immediately record total halibut length in inches on the GAF permit for retained GAF is unrealistic. Given existing constraints on charter vessel guides' time and attention, guides may not be able to accurately and reliably measure every GAF. There could be high variability in accuracy of lengths due to non-standardization in scales used by charter guides or measurement error. Consider evaluating the accuracy of charter guide halibut length measurement. Perhaps ADF&G creel clerks could assist with length measurement accuracy assessments, although assessment of length estimation accuracy in non-survey areas may be problematic.

*Response:* No changes were made from the proposed rule. NMFS believes that charter vessel guides will comply with the requirement at § 300.65(d)(4)(iii)(A)(1) to record on the GAF permit the date that the fish was caught and retained and the total length of that fish. Charter vessel anglers Area 2C have been limited to retaining halibut of a specified size during most years from 2007 through 2013, and these limits have required charter vessel guides to measure halibut at the time it is retained by anglers. This final rule also promotes accurate GAF reporting and facilitates enforcement of GAF regulations by implementing a GAF electronic reporting requirement at § 300.65(d)(4)(iii)(A)(2) in addition to a requirement at § 300.65(c)(5)(iv)(G) for charter vessel guides to retain the carcasses of GAF that are filleted on board the vessel for the duration of the charter vessel fishing trip.

*Comment 101:* The GAF reporting requirements at § 300.65(d)(4)(iii)(D) should include a requirement to electronically report the date on which the GAF was caught. The date is required to be reported on the GAF permit, and would be important to collect for validation, especially from vessels doing multi-day trips that are not required to file an electronic report until the end of the last day of the trip. Additionally, assuming accurate reporting, requiring reporting of the vessel identification number, guide license number, or community or port where the charter trip ended is not necessary. The vessel identification is currently linked to the logbook when

the logbook is assigned, and the other items are reported in the logbook data and would be available by linking to the logbook number and date.

*Response:* NMFS agrees that the date on which a GAF was caught should be electronically reported for validation and has made the suggested change (see “Changes from the Proposed Rule” section). NMFS disagrees that the vessel identification number, guide license number, and community or port where the charter vessel fishing trip ended (for community CHPs) are not needed, and no changes are made from the proposed rule in response to this comment. By requesting that GAF permit holders submit these data elements in the GAF electronic report, enforcement agents will have all of the information needed to initiate an investigation without having to request the data from ADF&G. This collection-of-information was reviewed under the Paperwork Reduction Act and approved by the Office of Management and Budget.

*Comment 102:* While NMFS sets fishing limits it appears there is no real means to count fish caught by guided anglers and charter operators. In the interest of good scientific data, a means of having realistic catch numbers recorded would support proposed rules and justify limits set forth.

*Response:* NMFS disagrees. The IPHC, not NMFS, determines the annual catch limits using estimates of all sources of halibut removals, including halibut caught by unguided anglers and charter operators (see “Catch Sharing Plan for Area 2C and Area 3A” section of this final rule and the response to Comment 1). Catch limits and management measures are implemented by the IPHC using the best data available, including estimates of halibut harvested by charter vessel anglers and recorded in ADF&G saltwater charter logbooks (see section 2.3.2 of the Analysis).

#### *Other Specific Issues*

*Comment 103:* The CSP violates the Magnuson-Stevens Act and the Halibut Act because the allocations are disproportionate between the charter and commercial industry and adverse economic impacts on affected communities have not been minimized.

*Response:* The CSP was developed and approved pursuant to the Halibut Act, not the Magnuson-Stevens Act. As explained in the response to Comment 2, the Halibut Act at 16 U.S.C. 773c(c) requires that allocations must be fair and equitable to affected halibut fishermen. The response to Comment 2 summarizes NMFS’ consideration of fairness and equity. As discussed in the response to Comment 121, NMFS has

considered economic impacts on small communities. However, NMFS notes that the Halibut Act does not impose a requirement that adverse economic impacts on affected communities be minimized.

*Comment 104:* The CSP is fair and equitable.

*Response:* See the response to Comment 2 for a description of how the CSP complies with the fairness and equity requirements of the Halibut Act.

*Comment 105:* The CSP is contrary to the plain meaning of the statutory term “fair” in the Halibut Act.

*Response:* The Secretary of Commerce has determined that the CSP meets the requirements of the Halibut Act including the requirements for fair and equitable distribution of access privileges as summarized in the response to Comment 2.

*Comment 106:* The CSP sets allocations that can never be removed, changed, or modified without the concurrence of the IPHC, and it forecloses any public comment by U.S. citizens under the Administrative Procedure Act about future catch levels.

*Response:* The Halibut Act at section 773c authorizes the Council to develop, and the Secretary of Commerce to approve, regulations that are in addition to, and not in conflict with, regulations adopted by the IPHC. The sector allocations established in this CSP were developed and approved consistent with section 773c. The public was afforded the opportunity to participate during the Council’s development of the formula for the sector allocations and NMFS published the proposed sector allocation formula for public comment consistent with section 553(c) of the Administrative Procedure Act. The sector allocation formula will apply in a predictable and standardized process to the IPHC’s combined catch limit (CCL) each year, resulting in the catch limits for the charter sector and to the commercial sector in Areas 2C and 3A. The Council may develop modifications to the CSP in the future through the same public Council process and submit those modifications to NMFS for approval and implementation.

*Comment 107:* There is a commercial bias on the Council. Fisheries management has unfairly supported commercial interests at the expense of the charter fleet. The Council has violated the Magnuson-Stevens Act requirement for fair representation because it has only one representative from the charter fishing sector. The charter halibut fishery and recreational interests are not adequately represented on this decision-making body.

*Response:* The consideration of balance and fairness between commercial and recreational fishing sectors is an important element in the Secretary’s appointments to the regional fishery management councils. Because of the limited number of Council seats and the diversity of fisheries managed by the Council, not all sectors can be represented through membership on the Council. For example, Pacific halibut is just one of 112 finfish species under active management by the Council, and is the only federally managed sport fish in its jurisdiction. Nevertheless, the commenter notes that Council membership includes one charter sector representative. NMFS also notes that the Council has formed a Charter Halibut Stakeholder Committee to advise the Council on industry proposals for CSP allocation options and the GAF program, and the Charter Halibut Limited Access Program. In 2011, the Council formed the Charter Halibut Management Implementation Committee to propose and recommend alternative management measures governing the charter halibut sector in times of low abundance to reduce uncertainty and mitigate negative economic impacts for fishery participants. To the extent that the comment implies that the CSP is unfair to the charter sector, NMFS has determined that the CSP is fair and equitable to halibut fishermen, including those participating in the charter sector. See the response to Comment 2.

*Comment 108:* The CSP will incorporate recreational anglers on charter boats into a commercial fishery management scheme. Will the next logical step be to allow recreational anglers on charter boats to use as many hooks as they want, similar to longliners? Or will longliners be restricted to one hook as recreational anglers are?

*Response:* NMFS disagrees with the commenter’s assertion that the CSP is incorporating management of charter anglers into a commercial fishery management scheme, and assumes that the comment is referring to the GAF provision of the CSP. As described above in the “Catch Sharing Plan for Area 2C and Area 3A” section, the CSP authorizes commercial halibut QS holders to transfer IFQ as GAF to charter halibut permit holders, but the fisheries will continue to be managed separately. The CSP does not change the gear types and limits currently established in regulation for the Area 2C and Area 3A for the commercial or charter halibut fisheries (see sections 19 and 25 of the IPHC annual management measures (78



FR 16423, March 15, 2013) and Table 15 to 50 CFR part 679).

*Comment 109:* Charter operators who hold IFQ have an unfair advantage. GAF will discourage healthy competition between charter operations.

*Response:* NMFS disagrees that allowing persons who hold halibut QS and one or more CHPs to lease IFQ as GAF will provide them with an unfair advantage and discourage competition. CHP holders who also hold halibut QS comprise approximately 6 percent of all CHP holders and 2 percent of all halibut QS holders in Area 2C and Area 3A (see section 2.5.12 of the Analysis). The amount of IFQ that is held by this small portion of CHP and IFQ permit holders and could be leased as GAF is unlikely to impact the overall supply of and demand for GAF in Area 2C and Area 3A. As described in the Analysis and in the response to Comment 45, the supply of and demand for GAF will be determined by the value of halibut in the directed commercial fishery and charter vessel anglers' willingness to pay higher prices for trips that allow greater harvest flexibility by using GAF, in addition to other factors. NMFS also notes that the regulations at § 300.65(c)(5)(iv)(H) implemented by this final rule restrict a person holding halibut QS and one or more CHPs to the same GAF transfer limits that apply to all other CHP and IFQ holders.

*Comment 110:* The CSP was developed with Area 2C in mind because charter harvests in that area had been exceeding the Area 2C GHL. Area 3A charter harvests have consistently been below the Area 3A GHL. The economic analysis was biased toward the type of business operations that exist in Area 2C. The CSP is not necessary for Area 3A.

*Response:* NMFS agrees that harvest of halibut in the Area 3A charter fishery has not exceeded the GHL since 2007 (see Table 2 in the proposed rule for the CSP). However, NMFS disagrees that the CSP should not be implemented for Area 3A. The proposed rule for the CSP describes that the objectives of the program are to define an annual process for allocating halibut between the charter and commercial halibut fisheries in Area 2C and Area 3A, establish allocations that vary with changing levels of annual halibut abundance and that balance the differing needs of the charter and commercial halibut fisheries over a wide range of abundance, and specify a process for determining harvest restrictions for charter anglers that are intended to limit harvest to the annual charter halibut fishery catch limit. Thus, while limiting harvest in the charter fishery to the annual charter

catch limit is an important component of the CSP, it is not the only purpose for implementing the program. Also see the response to Comment 1.

*Comment 111:* The GAF program is unfair to the charter sector. To be fair, a leasing option needs to be two-way, not just from the commercial to the charter sector.

*Response:* As described in the response to Comment 107, the Council considered recommendations from its Charter Halibut Stakeholder Committee during development of the CSP. The Charter Halibut Stakeholder Committee individually proposed or reviewed industry proposals for CSP allocation options, the GAF program, and the Charter Halibut Limited Access Program. In recommending the CSP to NMFS for approval and implementation, the Council adopted the Charter Halibut Stakeholder Committee's recommendation to include GAF in the CSP as a voluntary, market-based mechanism for transferring halibut allocation from the commercial sector to the charter sector in order for the charter sector to access additional halibut under a potentially constraining allocation. NMFS notes that modifications to the GAF program, such as the two-way leasing option as suggested in the comment, could be recommended to the Council for its consideration in the future.

*Comment 112:* Why are military charter vessels (vessels operated by U.S. Military Morale, Welfare and Recreation (MWR) programs for recreational use by service members) included in this rule?

*Response:* Military charter vessels are managed in the same manner as all other charter vessels. The final rule for the charter halibut limited access program describes that military Charter Halibut Permits (CHP) are special permits issued to charter vessels operated by MWR programs (75 FR 554, January 5, 2010). NMFS issues these military CHPs to authorize MWR programs to continue to afford U.S. military personnel charter halibut recreational opportunities (see regulations at § 300.67(l)). Although MWR programs have been issued special CHPs, the MWR programs are subject to the same regulatory requirements as any other guided charter operation, with one exception—the GAF transfer limits that apply to all other CHPs do not apply to military CHPs (see this final rule text at § 300.65(c)(5)(iv)(H)).

*Comment 113:* The Council unlawfully changed the April 2012 CSP motion at the June 2012 Council meeting in Kodiak, AK, because the CSP was not on the published agenda for the

June Council meeting. According to the Magnuson-Stevens Act, 16 U.S.C. 1852(i)(C), the published agenda of the meeting may not be modified to include additional matters for Council action without public notice or within 14 days prior to the meeting date, unless such modification is to address an emergency action.

*Response:* In April 2012, the Council amended its 2008 CSP preferred alternative and identified new alternatives for analysis and consideration. Final action to select a new CSP preferred alternative was scheduled for October 2012. The April 2012 motion included the unanimous recommendation of the Charter Halibut Management Implementation Committee to use ADF&G saltwater charter logbooks as the primary data collection method and to adjust (increase) the charter sector allocations by the five-year average percentage difference between the charter harvest estimates provided by the logbooks and the statewide harvest survey. The April 2012 motion stated that the adjustment factor for Area 3A should be reduced by the amount of harvest attributed to skipper and crew (see also the response to Comment 89). The adjustment factors in the April 2012 motion were 15.4 percent for Area 3A and 5.6 percent for Area 2C, but erroneously did not include the reduction for skipper and crew harvest in Area 3A.

In June 2012, Council and ADF&G staff provided notice that an error was found in the adjustment factor in Area 3A in that it did not contain the additional adjustment for skipper and crew harvest, and provided the corrected adjustment factor. The Council affirmed that this correction is consistent with Council intent and that the revised CSP analysis scheduled for review in October should use the corrected adjustment factor. The revised adjustment factor for Area 3A was 11.6 percent and resulted in a decrease in allocations under Alternatives 3 and 5 of 0.6 percent at abundances less than 25 million lb. No other changes to the motion or analysis were adopted.

The Council did not adopt a new motion in June. The Council received notice of an error in the calculation of the adjustment factor it recommended in its April motion; therefore, the item was not included on the published agenda. Based on the June 2012 clarification on the Area 3A adjustment factor, Council staff incorporated the corrected logbook adjustment factor into the CSP Analysis presented to the Council in October 2012. The Council recommended a CSP preferred alternative in October 2012, and the



agenda item was posted for the public according to the requirements in the Magnuson-Stevens Act. NMFS notes that the Council did not select a preferred alternative for Area 3A that included the logbook adjustment factor.

*Comment 114:* Postpone implementing the CSP until a Final Supplemental Environmental Impact Statement is complete and all requirements under the Regulatory Flexibility Act and E.O. 12866 are met.

*Response:* NMFS has complied with the requirements of the Regulatory Flexibility Act, Executive Order 12866, and the National Environmental Policy Act (NEPA) with respect to this action. NMFS prepared Initial and Final Regulatory Flexibility Analyses to comply with the requirements of the Regulatory Flexibility Act. NMFS prepared a Regulatory Impact Review (RIR) and the Office of Management and Budget has determined that this rule is not significant for purposes of E.O. 12866. NMFS prepared an Environmental Assessment (EA) to comply with the NEPA requirements for this action. The EA evaluated the environmental impacts of the action and its alternatives and found that it would not have a significant environmental impact on the human environment; therefore, an Environmental Impact Statement is not required. The EA, RIR, and IRFA were part of the Analysis prepared for this action and are available on the Internet (see **ADDRESSES** section). The FRFA and E.O. 12866 statement are presented in the Classification section of this final rule.

*Comment 115:* Did NMFS notify federally recognized Indian tribes in small communities, such as Ninilchik and Seldovia, about the proposed rule? If so, what was the position of these tribes on the proposed rule? If not, why were they not notified? Did NMFS determine whether the proposed rule would have a significant impact on the tribes?

*Response:* Executive Order 13175 requires NMFS to have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that may have tribal implications. Tribal implications are defined as those actions that may have a "substantial direct effect on one or more Indian tribes." The Alaska Regional Office's tribal consultation process is described on our Web site (<http://alaskafisheries.noaa.gov/tc/>).

As described in the response to Comment 1, this rule implements allocations between two sectors and links the charter sector's allocations more directly to halibut abundance. The

CSP has been on the agenda at numerous Council meetings since 2008, and has been the subject of two proposed rules seeking public comment. The first of these proposed rules, published on July 22, 2011 (76 FR 44156), elicited over 4,000 public comments. The second proposed rule was published on June 28, 2013 (78 FR 39122), with comments invited through August 12, 2013. The comment period on this proposed rule was extended to August 26, 2013 (78 FR 44920, July 25, 2013). NMFS received approximately 4,470 comments on this proposed rule. Public comment received throughout the Council's development of the CSP and during the rulemaking process did not indicate that the CSP would have a substantial direct effect on any tribe, and NMFS did not receive any requests for consultation by any tribe. Therefore, NMFS did not specifically notify the tribes of the proposed action.

While the impacts of the CSP on the communities of Ninilchik and Seldovia were not specifically analyzed, the impacts of the CSP on communities were analyzed in section 2.7 of the Analysis, which NMFS made available on its Web site at [http://alaskafisheries.noaa.gov/analyses/halibut/drafea\\_halibutcsp0613.pdf](http://alaskafisheries.noaa.gov/analyses/halibut/drafea_halibutcsp0613.pdf).

*Comment 116:* The CSP violates the rights of U.S. citizens by limiting their access to halibut, a public resource. Recreational anglers are entitled to more than one halibut.

*Response:* NMFS disagrees with the commenter's assertion that U.S. citizens and charter anglers are entitled to harvest more than one halibut per person per day. Although this action may constrain the amount of halibut available for harvest in the charter sector compared to historical harvests, no sport angler will be prevented from having access to the halibut resource for sport fishing.

*Comment 117:* The CSP may violate the Americans with Disabilities Act (ADA) by creating an additional barrier to disabled Americans to access the halibut resource.

*Response:* While it is not clear why the commenter believes the ADA applies in this situation, NMFS disagrees that the CSP creates additional barriers for disabled people to access the halibut resource. Disabled Americans may still access the resource as guided or unguided anglers, subsistence anglers, or by purchasing commercially caught halibut in the marketplace.

*Comment 118:* The CSP may violate United States antitrust laws by discouraging fair competition between the charter and commercial halibut sectors. The CSP also limits benefits of

consumers of charter halibut services by encouraging anglers to fish without a guide.

*Response:* NMFS has no information indicating that the CSP might violate any provision of antitrust laws. The CSP implements sector allocations and a GAF program. The Council and NMFS have determined that the CSP is fair and equitable to halibut fishermen (see response to Comment 2) and have evaluated its economic impacts (see response to Comment 120). Moreover, as noted in the response to Comment 86, NMFS does not have the information to determine whether more restrictive halibut management measures for charter vessel anglers in Area 2C may have resulted in an increase in the number of anglers fishing for halibut without a guide. Similarly, NMFS lacks information to determine whether future restrictions for charter vessel anglers in Area 3A would lead some charter vessel anglers to substitute unguided fishing for guided fishing to maintain a more liberal bag limit. NMFS notes that limits on the amount of IFQ that can be transferred and received as GAF were included in the CSP to prevent large charter operations from receiving an excessive share (see regulations at § 300.65(c)(5)(iv)(H) and the responses to Comments 62 and 67). Limits are already in place under the IFQ Program and Charter Halibut Limited Access Program to prevent excessive consolidation (see regulations at § 679.42 and § 300.67(j)).

*Comment 119:* Under the Alaska Constitution, no one user group should have an unequal share of Alaska's resources and Alaskan residents should have priority access to the halibut resource.

*Response:* Pacific halibut are subject to federal management under regulations published under authority of the Halibut Act. The Halibut Act does not allow management measures to discriminate between residents of different states. The CSP fairly and equitably allocates halibut fishing privileges between the commercial and charter sectors (see response to Comment 2).

#### *Economic Impacts*

*Comment 120:* Delay implementation of the CSP until an adequate economic study is conducted. The economic analysis is inadequate. NMFS did not try hard enough to find the best available information about the economic impacts of the CSP on the charter halibut fishery.

*Response:* The Council and Secretary of Commerce have determined that the Analysis adequately displays the

economic impacts of this action, including the impacts on the commercial and charter halibut sectors in Areas 2C and 3A.

The Analysis used the best available economic information for the charter sector to examine the costs and benefits of the alternatives considered for the CSP. Because cost and revenue information is not available for individual charter operations in Area 2C and Area 3A, the Council developed estimates of costs and gross revenues for representative charter operations using reports from sector participants and assumptions based on available data. The Analysis describes that the primary costs associated with charter operations are the vessel and charter halibut limited entry permits. The Council and NMFS have information on the cost of acquiring charter halibut limited access permits from a limited number of transactions, but the information does not indicate how these vessel costs apply to individual operators in Areas 2C and 3A. Charter operators also bear advertising, promotional, and support costs, which cannot be quantified with available information. The estimates of gross revenues for representative charter operations in Area 2C and Area 3A were based on the number of charter trips and charter anglers reported in ADF&G saltwater charter logbooks from 2005 through 2010 and on average rates charged for charter trips determined from a sample of individual charter operations in both areas.

As described in the response to Comment 5, the Council and Secretary of Commerce recognize that changing the formula for allocating halibut to the charter sectors in Areas 2C and 3A under the CSP could result in a smaller allocation to the charter sector at relatively low levels of halibut abundance relative to the status quo GHL program. The Analysis demonstrates that such harvest constraints could result in reduced gross revenues for charter operators. For example, section 2.6 of the Analysis shows that in Area 2C, declines in estimates of gross revenue coincided with a reduction in the daily bag limit for charter anglers in 2009 that was implemented to reduce charter harvest from levels that exceeded the GHL. However, the Analysis also notes that the connection between halibut available to the charter sector and resulting vessel revenues is less direct in the charter sector than in the commercial sector. While management measures governing charter harvest are intended to constrain total catch through their effects on individual anglers' harvests as well as on the

demand for charter fishing trips, there are also other factors that affect supply and demand of charter trips, such as the state of the economy in general.

The Council considered the anticipated effects of the CSP on the allocation to the charter sector at all levels of abundance (section 2.5 of the Analysis), and the potential impacts on the charter sector (section 2.6 of the Analysis). The Analysis shows that estimated gross revenues exceeded the average charter halibut permit price in both areas from 2005 through 2010. This was also the case for Area 2C following implementation of the one-fish daily bag limit in 2009.

The Council recommended that the CSP include other measures to mitigate the potential negative economic impacts to the charter sector of a constraining allocation under the CSP. First, the Council identified a responsive process for annually determining management measures for the charter sector. This process will use the most recent halibut stock assessment information, data from the recently completed charter fishing season, and input from charter fishery stakeholders to facilitate a recommendation for a management measure to restrict charter harvest that is intended to limit the sector to its allocation while minimizing negative impacts on charter angler demand by maintaining desirable fishing opportunities. Second, the Council recommended that NMFS authorize the use of halibut IFQ as GAF in the Area 2C and 3A charter halibut fishery to mitigate the negative impacts of halibut harvest constraints in the charter sector by providing a mechanism for charter anglers to increase halibut harvest when their daily bag limit is reduced.

Section 2.6 of the Analysis describes why it is not possible to provide quantitative estimates of the national or regional economic impacts of the alternatives considered with available information. A quantitative economic impact analysis would require information on the contributions to national or regional benefits associated with all sources of commercial removals (commercial, charter, and bycatch in non-directed fisheries), as well as the effects these removals may have on all users of the halibut resource, including unguided sport and subsistence users. This information is not available for the halibut fisheries off Alaska. Additionally, the analysis would require detailed information on costs and expenditures for operators in the commercial and charter fisheries as well as demand for charter trips and angler willingness-to-pay for trips. This

information is not available for the halibut fisheries off Alaska.

*Comment 121:* The CSP will do irreparable harm to tourism-dependent businesses and communities. A variety of charter fishing businesses and tourism support businesses (e.g., airlines, hotels, fish processors, taxis, restaurants) are patronized by charter vessel anglers that will suffer severe economic harm if anglers choose not to return to Alaska to fish for halibut under the CSP. Many charter businesses will be forced to close, which would also result in the closure of supporting businesses in Alaskan communities. The charter halibut fishery benefits Alaskan communities more than the commercial halibut fishery. The CSP will hurt small charter businesses in favor of large commercial halibut fishing businesses.

*Response:* As described in the response to Comment 136 and in sections 2.6 and 2.7 of the Analysis, both the commercial halibut fishery and the charter halibut fishery contribute to the economic base of coastal communities in Alaska. While it is not possible to quantify or directly compare the economic contributions provided by each sector to regional or local economies with available information, the Council and NMFS have considered the contribution of each fishery to Alaskan communities and the likely impacts of the CSP on affected fishery participants and communities. While CSP allocations to the charter sector may constrain charter harvest at lower levels of abundance, lower catch limits for the commercial halibut fishery at lower halibut abundance levels will also have negative economic impacts on commercial participants (see section 2.6.1.2 of the Analysis). As described in the response to Comment 1, the CSP allocations implemented by this final rule will allow the charter halibut fishery to fully benefit from increases in halibut abundance by receiving larger poundage allocations. NMFS notes that like most charter halibut operations in Areas 2C and 3A, many commercial halibut fishing operations are small businesses as described below in the FRFA in the Classification section in this final rule.

*Comment 122:* The economic benefit of the commercial sector in Alaska far outweighs the total economic benefit of the charter industry.

*Response:* Section 2.6 of the Analysis describes why it is not possible to provide quantitative estimates of the national or regional economic impacts of the alternatives considered with available information, including a comparison of the economic impacts of

the charter and commercial sectors. As described in the response to Comment 120, the Analysis uses the best available information to describe the costs and benefits of the CSP accruing to the commercial and charter halibut sectors in Areas 2C and 3A. Also see the response to Comment 121.

*Comment 123:* Charter fishing will be cost-prohibitive under the CSP, especially if charter vessel anglers are forced to buy GAF to augment the bag limit for guided anglers.

*Response:* NMFS acknowledges that charter vessel anglers may be negatively impacted by charter management measures implemented under the CSP at low levels of halibut abundance. However, as described in the response to Comment 1, the CSP allocations implemented by this final rule are intended to provide charter harvest opportunities that considers historic and present harvest rates. The CSP will allow the charter halibut fishery to fully benefit from increases in halibut abundance by receiving larger poundage allocations. Charter anglers would be negatively impacted at lower levels of halibut abundance if they derive less satisfaction from charter vessel fishing trips on which they can retain fewer halibut or halibut of a smaller size, but the opportunity to harvest halibut is not the only factor affecting the demand for guided saltwater sport charters. Other factors such as overall economic conditions or fuel prices also affect demand for charter vessel fishing trips (see section 1.7.5 of the Analysis). Thus, the demand for charter trips could decline even without additional charter harvest restrictions under the CSP. Section 8.1 of the Analysis describes that charter businesses provide the necessary guiding services, fishing equipment, and knowledge to give charter anglers the opportunity to harvest halibut and other species. Anglers have a number of different reasons for purchasing charter vessel fishing trips and would be impacted differently by reduced or increased catch limits for the charter sector, depending on the allocation and management measures that are in place. Some charter anglers are less interested in taking home a large amount of halibut, because of storage and shipping expenses, for example, and are more interested in the Alaska fishing experience.

NMFS notes that GAF is a voluntary program for anglers who wish to retain additional halibut when the daily bag limit in effect for charter anglers is less than two halibut of any size. As described in the response to Comment 7, the Council did not intend for GAF

to provide a mechanism to replace reductions in the charter allocation relative to historical or current harvest levels.

*Comment 124:* The Council's purpose and need statement for the CSP states that in some areas, community stability may be affected as traditional sport, subsistence, and commercial IFQ fishermen are displaced by CHP holders. It goes on to state that the uncertainty associated with the present situation and the conflicts that are occurring between the various user groups may also be impacting community welfare. How will community stability be affected if the charter halibut fishery, particularly in specific ports, is dramatically reduced or completely eliminated? Does empirical evidence suggest that traditional sport, subsistence, and commercial IFQ fisherman have been displaced by CHP holders since 2011, when the most conservative management measures were adopted?

*Response:* The anticipated impacts of the alternatives on communities are analyzed in sections 1.7.5, 2.7, 7, and 8.5 of the Analysis. The Council and NMFS recognize that at low levels of halibut abundance, the CSP allocation to the charter sector may constrain harvest relative to historical levels. However, as described in the response to Comment 1, the CSP allocations implemented by this final rule will allow the charter halibut fishery to fully benefit from increases in halibut abundance by receiving larger poundage allocations. The Council considered recent charter harvest levels in both areas when recommending the CSP allocations, including 2011 and 2012, years in which charter anglers in Area 2C were restricted by a daily bag limit of one halibut that was subject to a size limit. Based on the available information for halibut stock levels, recent charter harvests, and the estimated impacts of the CSP on the charter sector in section 2.6 of the Analysis, the Council and NMFS do not anticipate that the charter fishery will be dramatically reduced or eliminated under the CSP. Also see the response to Comment 7.

*Comment 125:* The king salmon fishery has declined in recent years, hurting charter businesses. The CSP will further hurt charter businesses by restricting halibut harvest.

*Response:* The Council and NMFS recognize that anglers in Area 2C and Area 3A harvest a number of other species in addition to halibut on charter vessel fishing trips, as described in section 1.7 of the Analysis. At low levels of abundance, the CSP allocation

to the charter sector may constrain harvest relative to historic levels. However, as described in the response to Comment 1, the CSP allocations implemented by this final rule will allow the charter halibut fishery to fully benefit from increases in halibut abundance by receiving larger poundage allocations.

*Comment 126:* The CSP fails to allow anglers the opportunity to access a public resource at an affordable price. The CSP would implement a plan that lessens the freedom of the public to harvest fish for their own dinner tables. Many people choose to hire charter vessel guides to take them fishing for the primary purpose of stocking their freezers to feed themselves and their families. Some choose to hire charters because owning their own boat is too expensive or transporting a boat to Alaska is impractical. Under the CSP, anglers will no longer be able to catch enough fish to justify the expense of a charter trip. They will be forced to either purchase an additional charter trip, or buy commercially caught fish and both of these options are cost prohibitive.

*Response:* NMFS acknowledges that at low levels of abundance, the CSP allocation to the charter sector may constrain charter harvest relative to historic levels. However, as described in the response to Comment 1, management of the charter fishery under the GHL program resulted in the commercial fishery bearing a disproportionate amount of the declines in halibut exploitable biomass relative to the charter sector. This changing proportional allocation of a fully utilized halibut resource between the sectors under the GHL program created instability between user groups that the Council sought to address with the commercial and charter sector halibut allocations implemented by this final rule. This action is intended to maintain stability, economic viability, and diversity of halibut user groups by addressing allocation conflicts between participants in the commercial and charter halibut fisheries. The Secretary of Commerce has determined that the CSP allocations are consistent with the Council's objectives as described in its problem statement and the purpose and need for the CSP described in section 1.2 of the Analysis.

NMFS notes that charter vessels are not the only way that the public can access the halibut resource. The commercial fishery provides access to halibut to those who prefer to purchase it in grocery stores or restaurants. The subsistence fishery provides access to harvest halibut by those who qualify to

conduct subsistence halibut fishing. Unguided recreational fishing also is a means of public access to the halibut resource. This rule does not constrain or limit any of these other means of public access to the halibut resource.

As described in the response to Comment 129, the opportunity to harvest halibut is not the only factor affecting the demand for guided saltwater sport charters and therefore, the cost to anglers of taking a charter vessel fishing trip. Other than acknowledging the potential for reduced demand for charter vessel fishing trips under constraining charter sector catch limits, as was done in the Analysis, NMFS cannot predict the number of charter vessel anglers that will choose to not take a charter vessel fishing trip as a direct result of this final rule.

*Comment 127:* There is no annual consideration or reciprocity from the commercial sector to the charter sector for loss of business. Should the CSP be implemented, it should be conditional upon annual reimbursement of the losses shown by the charter and affiliated interests.

*Response:* As described in the response to Comment 7, the Council faced the challenge of balancing historical halibut harvests, economic impacts to the commercial and charter sectors, and the declining halibut biomass in Area 2C and in Area 3A as it developed the CSP. As a result, it is not possible for any allocation consistent with the Council's CSP objectives to make participants in both fisheries whole economically given current halibut abundance levels. Given the lack of information on gross revenues and operating costs for individual charter businesses in Areas 2C and 3A (see section 2.6 of the Analysis), it is not clear how the annual reimbursement mechanism suggested by the commenter would function. However, suggestions for revisions to the CSP could be made to the Council for future consideration.

*Comment 128:* The CSP benefits non-US companies that pay no taxes at expense of local residents and businesses.

*Response:* The IFQ Program regulations at § 679.4 governing the commercial halibut fisheries in Area 2C and Area 3A require all halibut and sablefish quota share holders to be U.S. citizens. Although a limited number of charter halibut permits were initially issued to non-US charter businesses based on their history of participation in the Area 2C and Area 3A charter halibut fisheries, regulations at § 300.67(i)(2)(i) specify that only U.S. citizens or a U.S. business with a minimum of 75 percent

U.S. ownership are eligible to receive a charter halibut permit by transfer.

NMFS does not have information available to determine the location where taxes are paid. However, most of the commercial and charter operations regulated by the CSP are active in Alaska and Washington (see section 7.1 of the Analysis). Most, if not all, of these businesses are defined as small businesses under the Regulatory Flexibility Act (see FRFA in the Classification section of this rule). This definition has the same meaning as "small business concern" which is defined under section 3 of the Small Business Act. The Small Business Act has further defined a "small business concern" as one "organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor."

*Comment 129:* Continue to manage the Area 2C and Area 3A charter halibut fishery with the GHL program, even though it has resulted in a reduction in the long-term historic proportion of the halibut fishery available to the commercial sector in those areas. Participants in the commercial halibut fishery and consumers are less negatively impacted by reductions in catch limits than participants in the charter halibut fishery. The market price for halibut usually goes up when the supply goes down, providing for a somewhat stable bottom line for commercial halibut harvesters. Declines in commercial halibut catch limits do not impact consumers because halibut make up only a very small proportion of the fish that Americans eat, and consumers may substitute other white fish from farmed or wild sources. In contrast, the charter sector cannot charge more when charter sector catch limits are reduced.

*Response:* As described in the response to Comment 1, the Council and NMFS replaced the GHL in Areas 2C and 3A with commercial and charter sector allocations that vary directly with halibut abundance and that balance the differing needs of the charter and commercial halibut fisheries over a wide range of abundance.

Section 8.1 of the Analysis notes that research conducted on the price flexibility of Alaska halibut suggests that changes in ex-vessel price that result from increasing or decreasing the amount of commercial harvest in Areas 2C and 3A under the CSP are expected to be very small. Halibut caught in Area 2C and Area 3A directed commercial

fisheries compete with halibut harvested from California to the Bering Sea in a regional and international market. Prices in this market are determined by overall supply, the prices of substitute goods, income, exchange rates, inventories, and other factors. Area 2C and Area 3A commercial fishermen only contribute a part of the overall market supply, and thus a change in their production is unlikely to have an impact on the prices that consumers pay for commercially caught halibut.

*Comment 130:* Commercially caught halibut is cost prohibitive and of lesser quality than sport-caught fish. The CSP will make commercial halibut less affordable in the marketplace because there will be less competition from charter anglers.

*Response:* NMFS has no information suggesting that the CSP will make commercial halibut less affordable in the marketplace because there will be less competition from charter anglers, or that the quality of commercial halibut is inferior to that of sport-caught halibut. As described in the response to Comment 129, commercial halibut prices are determined by overall supply, the prices of substitute goods, income, exchange rates, inventories, and other factors. Area 2C and Area 3A commercial fishermen only contribute a part of the overall market supply of halibut, and thus a change in their production is unlikely to have an impact on the prices that consumers pay for commercially caught halibut.

*Comment 131:* The CSP provides stability for the public's access to sustainable seafood (via markets). The commercial fishery annually provides 44 times more Americans access to the halibut resource than the charter fishery and the global demand for commercial halibut continues to grow.

*Response:* As described in the response to Comment 129, halibut caught in the Area 2C and Area 3A directed commercial fisheries contribute only a part of the overall market supply in the United States and an even smaller part globally. The Council and the Secretary of Commerce considered the expected impacts of the CSP on consumers of halibut (see section 8.4 of the Analysis).

*Comment 132:* When commercial fishermen invested in quota shares, they did not buy a guaranteed number of pounds, but rather a share of the allowable catch limit. Charter operators have also made a substantial investment in their businesses and that investment should also be protected.

*Response:* NMFS acknowledges the comment and agrees that participants in

the charter halibut fisheries in Area 2C and Area 3A have made substantial investments in their business operations. NMFS also notes that participants in the commercial halibut fisheries in Areas 2C and 3A have also made substantial investments in their business operations. Section 1.7.1.6 of the Analysis describes the commercial halibut fisheries and explains that the IFQ Program assigns the privilege of harvesting a percentage of the halibut total allowable catches to QS holders, and that these percentages vary annually with changes in allowable harvest levels. As described in the response to Comment 120, the Council and Secretary of Commerce considered the analysis of the costs and benefits of this action accruing to the commercial and charter halibut sectors in Areas 2C and 3A (section 2.6 of the Analysis), and have determined that the CSP is necessary to achieve the halibut fishery management goals of the Council.

*Comment 133:* The number of sport fishing licenses sold by ADF&G has been declining. The CSP will result in further declines in the number of sport fishing licenses purchased and have negative impacts on the ADF&G budget.

*Response:* Because factors other than harvest restrictions affect demand for charter vessel fishing trips, NMFS cannot quantify the extent to which constraining charter halibut harvests at low levels of halibut abundance will reduce demand for sport fishing licenses issued for use on charter vessel fishing trips. Declines in demand could occur even without additional charter harvest restrictions when halibut abundance is low. Conversely, NMFS cannot quantify the extent to which increasing charter halibut harvests at high levels of halibut abundance will increase demand for sport fishing licenses and charter trips. NMFS agrees that reductions in the sale of sport fishing licenses may result in reduced revenue to the ADF&G and may have a negative impact on the agency's revenue and budget.

*Comment 134:* Many IFQ holders have purchased their quota share, which has lost value, while charter operators have no investment in QS. The Area 2C commercial sector has lost 6–7 percent of its allocation to the charter sector under the GHF program. The commenter also provided estimates of the income loss to a commercial QS holder and to the Area 2C commercial fishery as a whole. Participants in both sectors derive income from a public resource, and NMFS must consider the costs to participate in each fishery.

*Response:* Although NMFS agrees that Area 2C and Area 3A charter halibut operators are not required to invest in

QS to maintain their charter halibut operations, NMFS acknowledges that charter halibut operators have made substantial investments in their business operations. Section 2.6.1.1 of the Analysis describes the primary costs associated with charter operations, including the costs of obtaining charter halibut limited access permits. Section 2.6.1.2 of the analysis discusses the economic impacts that catch limit reductions have had on commercial halibut fishery participants in Area 2C and Area 3A. As described in the response to Comment 120, the Council and Secretary of Commerce considered the analysis of the costs and benefits of this action accruing to the commercial and charter halibut sectors in Areas 2C and 3A, and have determined that the CSP is necessary to achieve the halibut fishery management goals of the Council. Also see the response to Comment 138.

*Comment 135:* The number of bottomfish charter trips has declined significantly between 2006 and 2012 in both Area 2C (19 percent) and Area 3A (20 percent). While Area 2C charter operators blame this decline on more restrictive management measures, the Area 3A management measures have not changed in those years, but the decline in number of trips is similar. This suggests that changing national economic conditions are the driving force behind reduced demand for charter services, not regulatory change.

*Response:* NMFS agrees that a number of factors, including the harvest restrictions in place for charter vessel anglers, affect demand for charter halibut fishing trips. Also see the response to Comment 120 and section 1.7.5 of the Analysis.

*Comment 136:* Commercial halibut fishing does not benefit the State of Alaska because the majority of IFQ holders are from out of state.

*Response:* Based on owners' self-reported business mailing addresses, as of August 1, 2013, more than 77 percent of IFQ holders were designated as Alaskan; however, NMFS makes no effort to independently verify residency. Regardless of the state of residency, charter and commercial fishery operations in Alaska economically benefit their local communities. Like the charter industry, the commercial halibut fishery provides jobs, tax revenue, revenue to local businesses (e.g., marinas, restaurants, stores), and other economic benefits to local Alaskan communities (see section 2.7 of the Analysis). The commercial fishery also benefits the nation with a consistent and reliable supply of halibut.

*Comment 137:* Since 2004, the Area 2C commercial quotas were cut by 75 percent while the Area 3A commercial quotas have been reduced by 56 percent. These cuts have resulted in substantial economic losses to commercial harvesters, processors, and marketers, as well as reduced access to the halibut resource for consumers. The comparable GHF cuts were 44 percent in Area 2C and 25 percent in Area 3A.

*Response:* Sections 1.7.1.2 and 2.6.1.2 of the Analysis discuss the impacts of declining halibut exploitable biomass on commercial catch limits and the economic impacts these catch limit reductions have had on commercial halibut fishery participants in Area 2C and Area 3A. As described in the proposed rule and in the response to Comment 1, the Council and NMFS recognize that management of the charter fishery under the GHF program resulted in the commercial fishery bearing a disproportionate amount of the declines in halibut exploitable biomass relative to the charter sector. The Council sought to address this changing proportional allocation of a fully utilized halibut resource between the sectors under the GHF by recommending the CSP allocations implemented by this final rule.

*Comment 138:* The GHF has resulted in a reallocation of halibut to the charter sector. This reallocation has had a negative economic impact on my family's income as well as on the local economy. When I purchased quota share, I did not anticipate this reallocation to another sector.

*Response:* The Council and NMFS recognize that management of the charter fishery under the GHF program resulted in the commercial fishery bearing a disproportionate amount of the recent declines in halibut exploitable biomass relative to the charter sector (see response to Comment 1). Section 2.6.1.2 of the analysis discusses the economic impacts these catch limit reductions have had on commercial halibut fishery participants in Area 2C and Area 3A. Section 2.6.1.2 of the analysis presents six gross revenue and QS cost scenarios (three for Area 2C and three for Area 3A), each from 2003 to 2011. The scenarios provide information concerning the changes in revenue streams and QS value that arise from recent changes in halibut prices and declines in commercial catch limits resulting from reduced halibut exploitable biomass.

The analysis shows that in recent years QS holders in Area 2C were estimated to have experienced losses in gross revenues from their holdings. A portion of this decline likely has been

offset by increased halibut prices. Despite these price increases, revenues from halibut QS holdings were estimated to have declined in 2011 to substantially less than 2003 levels. Persons who purchased halibut QS, particularly at peak values in the mid-2000s, have seen the value of their holdings decline substantially. The Area 3A scenarios follow a slightly different pattern than the Area 2C scenarios because the magnitude of the decline in the Area 3A exploitable biomass and commercial catch limits is substantially less than the changes in Area 2C. Although increased halibut prices likely have also offset losses in gross revenues for commercial halibut QS holders in Area 3A, the scenarios estimate that QS holders have experienced losses in QS value since 2008. The Council and NMFS considered this information in developing the CSP implemented by this final rule.

#### Conservation

*Comment 139:* The CSP does not promote conservation. The proposed rule and Analysis both concede that the CSP will not affect conservation of the halibut stock; rather, the purpose of the rule is allocation of the halibut resource among competing user groups. The Halibut Act requires that any allocation must be reasonably calculated to promote conservation.

*Response:* Although resolving allocation disputes is an objective of the CSP, NMFS disagrees that the CSP will not promote conservation. The CSP promotes conservation by establishing a more stable allocation between the sectors and fostering a more easily managed charter halibut fishery. Separate accountability for wastage also promotes conservation by encouraging better handling of discarded fish by both the commercial and charter sectors (see responses to Comment 32 and Comment 35).

*Comment 140:* It seems there is more interest in making sure the charter and commercial sectors are made whole from an economic perspective than preserving the halibut stock.

*Response:* The CSP establishes Area 2C and Area 3A sector allocations from a combined catch limit (CCL). The CCL is derived by applying a conservative target harvest rate to the best estimate of exploitable biomass (see Figure 1, above), resulting in an appropriately conservative annual catch from the fisheries. See the responses to Comment 139 and Comment 7.

*Comment 141:* The CSP results in all sectors sharing in the conservation of the halibut at all levels of abundance.

*Response:* NMFS agrees that under the CSP both the charter and commercial sectors will share in conservation of the halibut resource.

*Comment 142:* The IPHC's treatment of charter harvest overages of the GHL confirms that halibut conservation is not the issue. Since 2007, the IPHC has deducted the GHL, not actual charter halibut harvest, from the Total CEY to obtain the Fishery CEY.

*Response:* The IPHC deducted the GHL from the Total CEY in accordance with the Council's domestic allocation policy implemented in the GHL regulations (see the response to Comment 1). The IPHC incorporated charter harvest overages and underages of the GHL into the stock assessment for sustainable management and conservation of the resource as described in the response to Comment 21).

*Comment 143:* Commercial catch limits have been decreasing not because of increased guided recreational catch, but because the exploitable biomass has been decreasing. This is largely because the IPHC has been setting commercial catch limits that IPHC's scientific staff admits have been too high to be sustainable.

*Response:* Commercial catch limits have declined in recent years as a result of declining halibut exploitable biomass. The Pacific halibut stock has been declining continuously over much of the last decade as a result of factors including decreasing size-at-age and poor recruitment strengths (see response to Comment 28). The factors resulting in the decreasing size-at-age and poor recruitment strengths are not understood. The IPHC takes a conservative model-based approach in setting the commercial fishery catch limits for the areas in and off Alaska. As described in the "Catch Sharing Plan for Area 2C and Area 3A" section above, the IPHC accounts for all removals, including removals in other fisheries, when setting catch limits for the directed commercial IFQ longline fishery. Section 1.7.1 of the Analysis describes the IPHC's stock assessment and harvest policy processes.

*Comment 144:* The halibut biomass is healthy; therefore, further reductions to the charter fishery are unnecessary.

*Response:* The Pacific halibut stock has been declining continuously over much of the last decade as a result of factors including decreasing size-at-age and poor recruitment strengths (see response to Comment 28). As described in the response to Comment 1, one of the objectives for the CSP is to establish a comprehensive management program for the charter halibut fisheries in Area

2C and Area 3A with sector allocations that balance the differing needs of the charter and commercial sectors over the wide range of abundance, and that increase or decrease ("float") with varying levels of halibut abundance.

*Comment 145:* Both sectors' allocations should be cut in half until the halibut stock recovers.

*Response:* The Council's rationale for its CSP allocation formula is summarized in the response to Comment 1. The Council recommended CSP allocations to balance historical harvest levels and economic impacts to the charter and commercial fisheries at all halibut stock abundance levels.

*Comment 146:* The charter halibut fleets in Area 2C and 3A have conserved more than one million pounds of halibut in the last three years through GHL underages.

*Response:* NMFS acknowledges that charter harvests have been below the GHLs in Area 2C and 3A in recent years and that those underages benefited the stock and all sectors because the biomass estimation for the subsequent year began at a higher level (see response to Comment 21).

*Comment 147:* The CSP will do long-term harm to society by limiting the public's opportunity to experience the wonders of Alaska, learn about the marine environment, and become advocates for sound fisheries policies.

*Response:* NMFS disagrees. One of the objectives for the CSP is establishment of sector allocations that balance the differing needs of the charter and commercial sectors over a wide range of halibut abundance, and that float with varying levels of halibut abundance. To accomplish this objective, the Council and NMFS replaced the GHL with sector allocations that vary directly with fluctuations in halibut abundance. The charter sector's allocation will be reduced in years of low abundance, while it will be increased in years of high abundance. Even in years of low abundance, charter anglers will continue to have opportunities to enjoy the outdoor experience from charter vessels in Areas 2C and 3A.

*Comment 148:* Further restrictions on halibut bag limits for charter vessel anglers will shift fishing pressure to other species like king salmon, lingcod, and rockfish.

*Response:* NMFS notes that this final rule does not implement any changes to the bag limits that currently apply to charter vessel anglers. The Council and NMFS have taken into account the capability of halibut charter vessels to be used in other fisheries and recognize that anglers aboard charter vessels in Area 2C and Area 3A harvest a number

of other species in addition to halibut on charter vessel fishing trips, as described in section 1.7 of the Analysis. ADF&G manages and monitors the sport fisheries for salmon, lingcod, and rockfish, and restrict harvest to meet biological management goals. NMFS does not anticipate the CSP will significantly increase the harvest of these other species (see section 1.7.2.2 of the Analysis).

#### General

*Comment 149:* NMFS received several requests to extend the public comment period on the proposed rule. A 45-day comment period was considered inadequate because of the length and complexity of the rule and supporting analysis, and because the comment period coincides with the busy summer fishing season. Commenters requested extensions of various lengths, up to an additional 60 days.

*Response:* NMFS considered the requests to extend the proposed rule comment period, recognizing the concern of those fishermen who might be out on the water during the comment period. To allow for greater opportunity for public input, NMFS granted an extension for 14 days until August 26, 2013 (78 FR 44920, July 25, 2013). A longer extension would have jeopardized NMFS' ability to prepare and publish the final rule in time to implement the CSP for the 2014 fishing season. In recommending the CSP, the Council urged NMFS to implement the CSP for the 2014 fishing season to provide stability for affected halibut fishery participants.

*Comment 150:* Anglers and small communities were not given adequate notice or opportunity to comment on the CSP. What steps has NOAA taken to inform the guided angler of the comment period on this regulation?

*Response:* NMFS believes that the public has been given sufficient notice and ample opportunity to comment on the CSP. The Council first began considering options to manage the charter fishery in the late 1990s, in response to the rapid and steady growth of the charter halibut industry in Areas 2C and 3A. A complete history of charter halibut management was detailed in the preamble of the proposed rule for the Charter Halibut Limited Access Program (74 FR 18178, April 21, 2009) and is not repeated here.

The Council began deliberating allocation options for a CSP for the commercial and charter halibut fisheries in 2006 (<http://alaskafisheries.noaa.gov/npfmc/halibut/charter-management.html>). Since 2006, elements of the CSP have been on the

agenda for discussion and Council action at no fewer than 12 Council meetings, where the public was given the opportunity to attend, testify, or submit written comments. Council meeting agenda items are available on the Council's Web site up to nine months in advance. As described in the response to Comment 107, the Council has also formed a number of committees since 1998 to provide management recommendations for the Area 2C and Area 3A charter halibut fisheries.

A proposed rule for a CSP was first published in July 2011, garnering several thousand public comments. NMFS modified this version of the CSP in response to some of those comments. The proposed rule for this revised CSP was published on June 28, 2013 (78 FR 39122). Prior to publication in the **Federal Register**, NMFS issued a press release and posted a notice on its Web page. This press release was distributed by several state and regional news outlets. Both rulemakings garnered wide media coverage. NMFS received a large number of public comments sent from anglers, commercial harvesters, charter operators, and community interests across a broad geographic range.

*Comment 151:* Federal regulations do not give the price or value of fish which NMFS requires in the IFQ cost recovery assessment. Publishing such data would help the consumer understand the cost of halibut in the market place.

*Response:* The proposed rule for the CSP describes how NMFS collects fees directly related to the management, data collection, and enforcement of the IFQ Program, consistent with regulations at § 679.45. Page 39143 of the proposed rule describes that NMFS uses data reported by Registered Buyers to compute annual standard ex-vessel IFQ prices by month and port (or, if confidential, by port group). These standard prices are published in the **Federal Register** each year. The standard prices for the 2012 IFQ fisheries were published on December 4, 2012 (77 FR 71783).

*Comment 152:* Continue to manage the charter sector to the GHL until the "pool plan" can be implemented.

*Response:* The comment refers to public testimony that the Council received at its October 2012 meeting. The testimony from charter sector representatives indicated that they were developing a proposal intended to supplement the annual CSP allocation of halibut to the Area 2C and 3A charter sectors (pool plan). The representatives indicated that the pool plan proposal would be provided to the Council at a future meeting. Based on the description

provided in October 2012, the pool plan would authorize an entity acting on behalf of the charter sector to purchase halibut quota share from commercial halibut fishery participants and hold the QS in a "common pool" for harvest in the charter halibut fishery by all anglers. The Council heard testimony that the developers intended for this plan to be an alternative to the GAF program in the future. See the "Guided Angler Fish (GAF)" section above for a description of the GAF program and the response to Comment 7 for the Council's rationale for recommending the GAF program. The Council recommended the CSP in October 2012 prior to presentation or analysis of the pool plan proposal; therefore, the pool program was not included among the alternatives considered for the CSP.

As described in the response to Comment 1, the GHL does not meet the Council's allocation objectives for managing the charter halibut fisheries in Areas 2C and 3A. At any point in the future, charter sector representatives can request the Council to consider a pool plan or any proposal to modify the CSP.

*Comment 153:* The Charter Halibut Limited Access Program has been effective at limiting the charter industry and further constraints are unwarranted at this time. There has not yet been enough time to evaluate the effectiveness of the CHLAP in limiting harvest.

*Response:* The Council had different halibut management objectives for the CHLAP and the CSP as described in section 1.2 of the Analysis. The Council determined, and NMFS agrees, that both programs are necessary to meet its management objectives for the charter halibut fishery.

NMFS received a number of public comments raising issues outside the scope of this action. These comments included proposals relating to the following issues: Additional regulations governing commercial harvest, subsistence harvest, and unguided recreational harvest; specific management measures to maintain charter harvest within the CSP charter halibut allocations in Areas 2C and 3A; development of a charter halibut IFQ management program; additional regulations limiting the number of guides eligible to provide charter halibut guiding services; additional regulations addressing possible localized depletion of halibut in specific areas; additional regulatory restrictions on halibut bycatch in other directed fisheries; prohibition of sport halibut derbies (fishing contests); regulations limiting ownership and operation of commercial fish processors in Alaska to



Alaskan residents; and delegation of halibut management authority to the State of Alaska. NMFS invites the commenters to raise these issues to the Council for its consideration.

NMFS also received numerous comments recommending approval and implementation of the CSP.

#### **VI. OMB Revisions to Paperwork Reduction Act References in 15 CFR 902.1(b)**

Section 3507(c)(B)(i) of the PRA requires that agencies inventory and display a current control number assigned by the Director, OMB, for each agency information collection. 15 CFR 902.1(b) identifies the location of NOAA regulations for which OMB approval numbers have been issued. Because this final rule revises and adds data elements within collections-of-information for recordkeeping and reporting requirements, 15 CFR 902.1(b) is revised to reference correctly the sections resulting from this final rule.

#### **VII. Classification**

Section 5(c) of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773c(c)) authorizes the regional fishery management council having authority for a particular geographical area to develop regulations governing fishing for halibut in U.S. Convention waters as long as those regulations are in addition to, and do not conflict with, IPHC regulations. This action is consistent with the Council's authority to develop, and the Secretary of Commerce to approve, such regulations. The Secretary has consulted with the U.S. Coast Guard on this action.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

An RIR/IRFA was prepared to assess costs and benefits of available regulatory alternatives. A copy of the Analysis is available from NMFS (see **ADDRESSES**).

#### *Regulatory Flexibility Act (RFA)*

A final regulatory flexibility analysis (FRFA) is required by the Regulatory Flexibility Act. This FRFA incorporates the initial regulatory flexibility analysis (IRFA) prepared for the proposed rule and addresses the applicable requirements of section 604(a) of the RFA. A statement of the need for, and objectives of, this final rule has already been provided earlier in the preamble to this final rule and is not repeated here.

#### *Comments on the IRFA*

The proposed rule was published in the **Federal Register** on June 28, 2013 (78 FR 39122). An initial regulatory flexibility analysis (IRFA) was prepared

and described in the Classification section of the proposed rule. The public comment period ended on August 26, 2013. NMFS received 4,740 communications raising 198 unique issues, 153 of which were within the scope of this action. Comments 126 through 144 address the economic impact of the rule on small entities. These comments and NMFS' responses are in the sections entitled, "IV. Changes From the Proposed Rule" and "V. Comments and Responses" of this preamble.

No comments on the proposed rule were filed with NMFS by the Chief Counsel for Advocacy of the Small Business Administration.

#### *Description and Estimate of the Number of Small Entities Regulated by the Action*

The universe of directly regulated entities for this action includes (a) holders of one or more charter halibut permits in Area 2C and Area 3A; (b) community quota entities that hold charter halibut permits and are authorized to use GAF; and (c) all commercial halibut quota share holders.

The Small Business Administration (SBA) specifies that for marinas and charter or party vessels, a small business is one with annual receipts less than \$7.0 million. The largest of these charter vessel operations, which are lodges, may be considered large entities under SBA standards, but that cannot be confirmed because NMFS does not have or collect economic data on lodges necessary to definitively determine total annual receipts. Thus, all charter vessel operations regulated by the proposed CSP would likely be considered small entities, based on SBA criteria, because they would be expected to have gross revenues of less than \$7.0 million on an annual basis.

In October 2012, NMFS published an implementation report for the charter halibut limited access program after all interim permits had been adjudicated and resolved. This report is available at [http://alaskafisheries.noaa.gov/ram/charter/chp\\_review1012.pdf](http://alaskafisheries.noaa.gov/ram/charter/chp_review1012.pdf). At the time of publication, a total of 972 charter halibut permits had been issued to 356 businesses in Area 2C and 439 businesses in Area 3A. Of these, 372 charter halibut permits in Area 2C and 339 permits in Area 3A are transferable. A charter halibut permit holder may transfer a transferable permit, subject to NMFS approval, to a qualified person at any time. The exact number of charter businesses that would be regulated by the CSP therefore cannot be determined because some businesses hold CHPs in each regulatory area and may be

counted twice, and because permits are continually being transferred, sold, or retired, or additional community charter halibut permits are being issued. As of October 2012, 107 community CHPs had been issued to 20 CQEs, and 7 U.S. Military Morale, Welfare, and Recreation Program permits had been issued to 3 permit holders.

Regulations that directly regulate entities representing small, remote communities in Areas 2C and 3A are included in this action. These regulations will authorize communities holding community charter halibut permits or regular charter halibut permits to use GAF as proposed under the CSP. GAF will offer charter vessel anglers in Area 2C or Area 3A an opportunity to harvest halibut in addition to the halibut harvested under the charter halibut management measure, up to the harvest limits in place for unguided sport anglers in that area. Eligibility for community charter halibut permits required that the community be represented by a non-profit community quota entity approved by NMFS. Of the 22 CQEs that formed, 11 Area 2C communities were eligible and each received 4 halibut community CHPs and 9 Area 3A communities were eligible and each received 7 halibut community CHPs. A maximum of 18 communities in Area 2C and 14 communities in Area 3A are eligible to form CQEs and apply for charter halibut permits at any time. Therefore, there is a maximum of 32 eligible community entities that could be authorized by the action to use GAF. All of these eligible communities would be considered small entities under the SBA definitions.

All halibut QS holders are directly regulated entities because cost recovery fees for the GAF program are levied to all QS holders, not just those with quota for Areas 2C and 3A. Commercial halibut QS holders are considered part of the Finfish Fishing industry for SBA purposes. On June 20, 2013, the SBA issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 FR 37398, June 20, 2013). The rule increased the size standard for Finfish Fishing from \$4.0 to 19.0 million.

The IRFA for this action was prepared before these new size standards went into effect. NMFS has reviewed the IRFA prepared for this action in light of the new size standards. Under the old size standard, an estimated 2,737 QS holders were considered small entities, and 65 were classified as large entities. Because there are no data to directly link QS holders with all other fishery revenue they may generate, it is not possible to determine the number of

small entities with certainty. However, it is likely that many of the 65 businesses formerly considered large entities may now be considered small entities under the new \$19 million standard. If all 65 entities were reclassified as small entities, the maximum number of commercial halibut harvesters classified as small entities and directly regulated by this rule would be 2,802. Therefore, for purposes of this FRFA, all directly regulated entities are considered small entities. With this assumption, the new size standards could increase the number of small entities affected by this final rule. NMFS has identified no additional significant alternatives that accomplish statutory objectives and minimize any significant economic impacts of the proposed rule on small entities.

#### *Description of the Alternatives Considered*

A FRFA must describe the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of the Halibut Act and other applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency that affect the impact on small entities was rejected.

The status quo alternative (Alternative 1) specifies the GHL as a target amount of halibut that anglers in the charter fishery can harvest in Area 2C and Area 3A. However, charter halibut harvests that exceed the GHL may have a de facto allocation effect of reducing the amount of halibut that may be harvested by the commercial fishery in the following year. Additionally, charter halibut fishery harvests beyond the GHL also can undermine overall harvest strategy goals established by the IPHC for the halibut resource, which affects all users. The primary objectives of the CSP are to define an annual process for allocating halibut between the charter and commercial fisheries in Area 2C and Area 3A, establish allocations that balance the differing needs of the charter and commercial fisheries that vary with changing levels of annual halibut abundance, and specify a process for determining harvest restrictions for charter anglers that are intended to limit harvest to the annual charter fishery catch limit. The status quo does not meet the objectives of the CSP.

The Council considered four alternatives to the status quo for the

proposed CSP. Alternatives 2 through 5 all recommend the implementation of a CSP for Areas 2C and 3A with separate accountability by fishery for mortality of discarded fish, and a program to allow charter operators to lease IFQ from participants in the commercial halibut fishery, called the GAF program. Alternatives 2 through 5 all include fixed allocation percentages of a combined commercial and charter catch limit to the charter and commercial halibut fisheries. The Council determined that a fixed percentage allocation best met its objectives with the least impact to affected entities. Additionally, a fixed percentage allocation would be equitable because both the commercial and charter halibut fisheries would have allocations that vary with the abundance of the halibut resource. Thus, both the charter and commercial halibut fisheries would share in the benefits and costs of managing the resource for long-term sustainability under a CCL.

The main differences among Alternatives 2 through 5 are in how the allocation percentages are set. Allocation percentages to the charter halibut fishery are the lowest under Alternative 2 and highest under Alternative 5. Alternatives 2 through 5 also differ in how annual charter halibut harvest restrictions would be implemented.

Alternative 2 included allocation percentages that did not include upward adjustments for the switch from the Statewide Harvest Survey to ADF&G saltwater charter logbooks as the primary data source. Alternative 2 contained a pre-determined and fixed set of harvest restrictions that would have been triggered automatically under the CSP depending on the CCL determined each year by the IPHC. Alternative 2 was not selected because the allocations to the charter halibut fishery were not deemed adequate to support charter fishing operations and the fixed harvest restrictions were determined to be too rigid and did not give managers enough discretion to modify those measures as needed to best achieve harvest objectives and minimize potential adverse economic impact.

The CSP is concerned with the allocation of halibut among user groups composed almost entirely of small entities. Alternatives 3, 4, and 5 vary the allocation between charter operators and commercial fishermen in the halibut fisheries. These alternatives reflect different policy choices that would affect different groups of small entities, but would not differentially impact small entities compared to large entities.

Alternatives 3, 4, and 5 did not prescribe annual charter harvest restrictions as part of the CSP. Instead, under these alternatives, charter harvest restrictions would continue to be set through a separate annual process of Council recommendations to the IPHC. This approach is detailed in the "Annual Process for Setting Charter Management Measures" section of the preamble to the proposed rule (78 FR 39122, June 28, 2013). This approach was considered more flexible, responsive to the most recent information available on halibut removals, and allowed greater stakeholder input in the selection of annual harvest restrictions than the pre-determined and fixed set of harvest restrictions included in Alternative 2.

Alternative 3 recommended a CSP with allocations to the charter halibut fishery that were increased from the Alternative 2 allocations to account for catch reporting using the saltwater charter logbook instead of the statewide harvest survey (SWHS). The Council selected Alternative 3 as its preferred alternative for Area 2C. The rationale for selecting Alternative 3 as the preferred alternative for Area 2C is provided in sections 1.6.6 and 1.6.7 of the Analysis and page 39130 of the proposed rule, and is not repeated here.

Alternative 4 would establish allocations for the charter halibut fishery based on Alternative 2, plus an additional 3.5 percent of the CCL at lower CCL levels. Allocations under Alternative 4 were higher than Alternatives 2 and 3, but lower than Alternative 5. The Council selected Alternative 4 as its preferred alternative for Area 3A. The rationale for selecting Alternative 4 as the preferred alternative for Area 3A is provided in sections 1.6.6 and 1.6.7 of the Analysis and page 39130 of the proposed rule, and is not repeated here.

Alternative 5 contained the largest allocations to the charter halibut fishery based on the allocations in Alternative 3, plus an additional 3.5 percent of the CCL. Alternative 5 was not chosen as the Council's preferred alternative because it did not meet the Council's objective to select an allocation that balanced historical and recent harvests by the charter sector.

#### *Reporting and Recordkeeping Requirements*

This action imposes new recordkeeping requirements. Applications to transfer between IFQ and GAF will be required to be submitted to, and approved by, NMFS for each transfer from IFQ to GAF. The application will require information

about the IFQ permit holder and the charter halibut permit holder, including each permit holder's contact information, the IFQ permit holder's account from which halibut pounds are to be transferred, and the GAF account to which GAF are to be transferred. NMFS will rely on data already collected through the ADF&G saltwater charter logbooks for additional management and enforcement needs. In addition, CQEs eligible to receive community charter halibut permits will be required to submit information to NMFS (1) on the application for a transfer between IFQ and GAF, and (2) regarding the CQE's activity in an annual report by January 31 of the following year. NMFS will require charter vessel guides to record on the GAF permit log the date and length of any GAF halibut caught and kept, immediately upon harvest. NMFS will also require GAF permit holders to report via an online system information about each GAF halibut caught and retained at the end of each fishing trip, and to record the GAF electronic reporting confirmation number on the GAF permit log. The professional skills necessary to comply with the reporting and recordkeeping requirements for small entities impacted by this rule include the ability to read, write, and understand English, and the ability to use a computer and the internet. The recordkeeping and reporting requirements will not likely represent a "significant" economic burden on the small entities operating in this fishery.

#### *Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, NMFS will post a small entity compliance guide on the NMFS Alaska Region Web site: <http://alaskafisheries.noaa.gov/sustainablefisheries/halibut/sport.htm>. Contact NMFS to request a hard copy of the guide.

#### **Paperwork Reduction Act Collection of Information Requirements**

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by the Office

of Management and Budget (OMB). The collections are described and their public reporting burdens are estimated by OMB control number below.

#### *OMB Control No. 0648-0398*

Public reporting burden per response is estimated to average 2 hours for the IFQ Permit Holder Fee Submission Form, and 2 hours for the IFQ Registered Buyer Ex-Vessel Value and Volume Report.

#### *OMB Control No. 0648-0575*

Public reporting burden per response is estimated to average 4 minutes for ADF&G Saltwater Sport Fishing Charter Trip Logbook entry for vessel guide and submittal; 1 minute per angler for angler signatures of ADF&G Saltwater Sport Fishing Charter Trip Logbook; 1 minute to measure each GAF; 1 minute to record GAF lengths on the GAF permit log; 4 minutes to enter data into the GAF electronic reporting system; and 1 minute to record the GAF electronic reporting confirmation number on the GAF permit log.

#### *OMB Control No. 0648-0592*

Public reporting burden per response is estimated to average 1 hour for an Application for Transfer Between IFQ and GAF; and 1 hour for an Application for Transfer Between IFQ and GAF by a Community Quota Entity.

#### *OMB Control No. 0648-0272*

The IFQ permit is mentioned in this rule; however, the public reporting burden for the IFQ permit in this collection-of-information is not directly affected by this rule.

Public reporting burden estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

This final rule is consistent with Executive Order 12962 as amended September 26, 2008, which required Federal agencies to ensure that recreational fishing is managed as a

sustainable activity and is consistent with existing law.

#### **List of Subjects**

##### *15 CFR Part 902*

Reporting and recordkeeping requirements.

##### *50 CFR Part 300*

Administrative practice and procedure, Antarctica, Canada, Exports, Fish, Fisheries, Fishing, Imports, Indians, Labeling, Marine resources, Reporting and recordkeeping requirements, Russian Federation, Transportation, Treaties, Wildlife.

##### *50 CFR Part 679*

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: December 6, 2013.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, NMFS amends 15 CFR part 902 and 50 CFR parts 300 and 679 as follows:

#### **15 CFR Chapter IX**

#### **PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS**

■ 1. The authority citation for part 902 continues to read as follows:

**Authority:** 44 U.S.C. 3501 et seq.

■ 2. In § 902.1, the table in paragraph (b), under the entry 50 CFR is amended by:

■ a. Removing entries for §§ 679.41(a), (b), (c)(1) through (9), (d) through (f), (g)(1) through (4), (h) through (k), and (m); and 679.42(a)(1)(i) through (ii), (b) through (g), (h)(1), (h)(1)(i), (h)(2), and (h)(2)(i);

■ b. Revising the entries for §§ 300.65(d) and 679.45; and

■ c. Adding in alphanumeric order new entries for §§ 300.65(c)(5); 679.41(a); 679.41(b), (c)(1) through (9), (d) through (f), (g)(1) through (4), (h) through (k), and (m); 679.42(a)(1)(i) through (ii), (b) through (e), (g), (h)(1), (h)(1)(i), (h)(2), and (h)(2)(i); 679.42(f)(1); and 679.42(f)(6).

The additions and revisions read as follows:

#### **§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

\* \* \* \* \*

(b) \* \* \*

CFR part or section where the information collection requirement is located					Current OMB control number (all numbers begin with 0648–)	
*	*	*	*	*	*	*
50 CFR						
*	*	*	*	*	*	*
300.65(c)(5) .....					–0272, –0592, –0665	
*	*	*	*	*	*	*
300.65(d) .....					–0575, –0592	
*	*	*	*	*	*	*
679.41(a) .....					–0272, –0592	
679.41(b), (c)(1) through (9), (d) through (f), (g)(1) through (4), (h) through (k), and (m) .....					–0272	
*	*	*	*	*	*	*
679.42(a)(1)(i) through (ii), (b) through (e), (g), (h)(1), (h)(1)(i), (h)(2), and (h)(2)(i) .....					–0272	
679.42(f)(1) .....					–0272, –0592	
679.42(f)(6) .....					–0272, –0592, –0665	
*	*	*	*	*	*	*
679.45 .....					–0272, –0398, –0592	
*	*	*	*	*	*	*

**50 CFR Chapter III****PART 300—INTERNATIONAL FISHERIES REGULATIONS****Subpart E—Pacific Halibut Fisheries**

■ 3. The authority citation for part 300, subpart E, continues to read as follows:

**Authority:** 16 U.S.C. 773–773k.

■ 4. In § 300.61:

- a. Remove the definition for “Guideline harvest level (GHL)”;
- b. Revise the definitions for “Charter vessel angler”, “Charter vessel fishing trip”, “Charter vessel guide”, “Charter vessel operator”, “Crew member”, “Individual Fishing Quota (IFQ)”, and “Sport fishing guide services”; and
- c. Add definitions for “Annual combined catch limit”, “Annual commercial catch limit”, “Annual guided sport catch limit”, “Guided Angler Fish (GAF)”, “Guided Angler Fish (GAF) permit”, and “Guided Angler Fish (GAF) permit holder” in alphabetical order to read as follows:

**§ 300.61 Definitions.**

\* \* \* \* \*

*Annual combined catch limit*, for purposes of commercial and sport fishing in Commission regulatory areas 2C and 3A, means the annual total allowable halibut removals (halibut harvest plus wastage) by persons fishing IFQ and by charter vessel anglers.

*Annual commercial catch limit*, for purposes of commercial fishing in Commission regulatory areas 2C and 3A, means the annual commercial allocation minus an area-specific estimate of commercial halibut wastage.

*Annual guided sport catch limit*, for purposes of sport fishing in Commission regulatory areas 2C and 3A, means the annual guided sport allocation minus an area-specific estimate of guided sport halibut wastage.

\* \* \* \* \*

*Charter vessel angler*, for purposes of §§ 300.65, 300.66, and 300.67, means a person, paying or non-paying, using the services of a charter vessel guide.

*Charter vessel fishing trip*, for purposes of §§ 300.65, 300.66, and 300.67, means the time period between the first deployment of fishing gear into the water from a vessel after any charter vessel angler is on board and the

offloading of one or more charter vessel anglers or any halibut from that vessel.

*Charter vessel guide*, for purposes of §§ 300.65, 300.66 and 300.67, means a person who holds an annual sport guide license issued by the Alaska Department of Fish and Game, or a person who provides sport fishing guide services.

*Charter vessel operator*, for purposes of § 300.65, means the person in control of the vessel during a charter vessel fishing trip.

\* \* \* \* \*

*Crew member*, for purposes of §§ 300.65 and 300.67, means an assistant, deckhand, or similar person who works directly under the supervision of, and on the same vessel as, a charter vessel guide or operator of a vessel with one or more charter vessel anglers on board.

\* \* \* \* \*

*Guided Angler Fish (GAF)* means halibut transferred within a year from a Commission regulatory area 2C or 3A IFQ permit holder to a GAF permit that is issued to a person holding a charter halibut permit, community charter halibut permit, or military charter

halibut permit for the corresponding area.

*Guided Angler Fish (GAF) permit* means an annual permit issued by the National Marine Fisheries Service pursuant to § 300.65(c)(5)(iii).

*Guided Angler Fish (GAF) permit holder* means the person identified on a GAF permit.

\* \* \* \*

*Individual Fishing Quota (IFQ)*, for purposes of this subpart, means the annual catch limit of halibut that may be harvested by a person who is lawfully allocated a harvest privilege for a specific portion of the annual commercial catch limit of halibut.

\* \* \* \*

*Sport fishing guide services*, for purposes of §§ 300.65 and 300.67, means assistance, for compensation, to a person who is sport fishing, to take or attempt to take fish by being on board a vessel with such person during any part of a charter vessel fishing trip. Sport fishing guide services do not include services provided by a crew member.

\* \* \* \*

■ 5. In § 300.65, revise paragraphs (b), (c), and (d) to read as follows:

**§ 300.65 Catch sharing plan and domestic management measures in waters in and off Alaska.**

\* \* \* \*

(b) The catch sharing plan for Commission regulatory area 4 allocates the annual commercial catch limit among Areas 4C, 4D, and 4E and will be adopted by the Commission as annual management measures and published in the **Federal Register** as required in § 300.62.

(c) *Catch sharing plan (CSP) for Commission Regulatory Areas 2C and 3A*—(1) *General*. The catch sharing plan for Commission regulatory areas 2C and 3A:

(i) Allocates the annual combined catch limit for Commission regulatory areas 2C and 3A in order to establish the annual commercial catch limit and the annual guided sport catch limit for the halibut commercial fishing and sport fishing seasons, pursuant to paragraphs (c)(3) and (4) of this section; and

(ii) Authorizes the use of Commission regulatory areas 2C and 3A halibut IFQ as guided angler fish (GAF) for harvest by charter vessel anglers in the corresponding area, pursuant to paragraph (c)(5) of this section.

(2) *Implementation*. The Commission regulatory areas 2C and 3A CSP annual combined catch limits, annual commercial catch limits, and annual guided sport catch limits are adopted by

the Commission as annual management measures and published by NMFS in the **Federal Register** as required in § 300.62.

(3) *Annual commercial catch limits*.

(i) The Commission regulatory areas 2C and 3A annual commercial catch limits are determined by subtracting wastage from the allocations in Tables 1 and 2 of this subpart E, adopted by the Commission as annual management measures, and published in the **Federal Register** as required in § 300.62.

(ii) Commercial fishing in Commission regulatory areas 2C and 3A is governed by the Commission's annual management measures and by regulations at 50 CFR part 679, subparts A, B, D, and E.

(4) *Annual guided sport catch limits*.

(i) The Commission regulatory areas 2C and 3A annual guided sport catch limits are determined by subtracting wastage from the allocations in Tables 3 and 4 of this subpart E, adopted by the Commission as annual management measures, and published in the **Federal Register** as required in § 300.62.

(ii) Sport fishing by charter vessel anglers in Commission regulatory areas 2C and 3A is governed by the Commission's annual management measures and by regulations at 50 CFR part 300, subparts A and E.

(5) *Guided Angler Fish (GAF)*. This paragraph (§ 300.65(c)(5)) governs the transfer of Commission regulatory areas 2C and 3A halibut between individual fishing quota (IFQ) and guided angler fish (GAF), the issuance of GAF permits, and GAF use.

(i) *General*. (A) GAF is derived from halibut IFQ that is transferred from a Commission regulatory area 2C or 3A IFQ permit holder's account held by a person who also holds quota share (QS), as defined in § 679.2 of this title, to a GAF permit holder's account for the same regulatory area.

(B) A GAF permit authorizes a charter vessel angler to retain GAF that are caught in the Commission regulatory area specified on a GAF permit:

(1) During the sport halibut fishing season adopted by the Commission as annual management measures and published in the **Federal Register** as required in § 300.62, and

(2) Subject to the GAF use restrictions at paragraphs (c)(5)(iv)(A) through (K) of this section.

(C) NMFS will return unharvested GAF to the IFQ permit holder's account from which the GAF were derived on or after fifteen calendar days prior to the closing of the commercial halibut fishing season each year, subject to paragraph (c)(5)(ii) of this section and

underage provisions at § 679.40(e) of this title.

(ii) *Transfer Between IFQ and GAF*—(A) *General*. A transfer between IFQ and GAF means any transaction in which halibut IFQ passes between an IFQ permit holder and a GAF permit holder as:

(1) A transfer of IFQ to GAF, in which halibut IFQ equivalent pounds, as defined in § 679.2 of this title, are transferred from a Commission regulatory area 2C or 3A IFQ permit account, converted to number(s) of GAF as specified in paragraph (c)(5)(ii)(E) of this section, and assigned to a GAF permit holder's account in the same management area;

(2) A transfer of GAF to IFQ, in which GAF in number(s) of fish are transferred from a GAF permit holder's account in Commission regulatory area 2C or 3A, converted to IFQ equivalent pounds as specified in paragraph (c)(5)(ii)(E) of this section, and assigned to the same IFQ permit holder's account from which the GAF were derived; or

(3) The return of unharvested GAF by NMFS to the IFQ permit holder's account from which it was derived, on or after 15 calendar days prior to the closing of the commercial halibut fishing season.

(B) *Transfer procedure*—(1) *Application for Transfer Between IFQ and GAF*. A transfer between IFQ and GAF requires Regional Administrator review and approval of a complete Application for Transfer Between IFQ and GAF. Both the transferor and the transferee are required to complete and sign the application. Transfers will be conducted via methods approved by NMFS. The Regional Administrator shall provide an Application for Transfer Between IFQ and GAF on the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov/ram/default.htm>. An Application for Transfer Between IFQ and GAF is not required for the return of unharvested GAF by NMFS to the IFQ permit holder's account from which it was derived, 15 calendar days prior to the closing of the commercial halibut fishing season for that year.

(2) *Application timing*. The Regional Administrator will not approve any Application for Transfer Between IFQ and GAF before annual IFQ is issued for each year or after one month prior to the closing of the commercial fishing season for that year. Applications to transfer GAF to IFQ will be accepted from August 1 through August 31 only.

(3) *Transfer due to court order, operation of law, or as part of a security agreement*. NMFS may approve an Application for Transfer Between IFQ

and GAF to return GAF to the IFQ permit holder's account from which it derived pursuant to a court order, operation of law, or a security agreement.

(4) *Notification of decision on application.* (i) Persons who submit an Application for Transfer Between IFQ and GAF to the Regional Administrator will receive notification of the Regional Administrator's decision to approve or disapprove the application for transfer.

(ii) If an Application for Transfer Between IFQ and GAF is disapproved, NMFS will provide the reason(s) in writing by mail, posted on the date of that decision.

(iii) Disapproval of an Application for Transfer Between IFQ and GAF may be appealed pursuant to § 679.43 of this title.

(iv) The Regional Administrator will not approve a transfer between IFQ and GAF on an interim basis if an applicant appeals a disapproval of an Application for Transfer Between IFQ and GAF pursuant to § 679.43 of this title.

(5) *IFQ and GAF accounts.* (i) Accounts affected by either a Regional Administrator-approved Application for Transfer Between IFQ and GAF or the return of unharvested GAF to IFQ on or after 15 calendar days prior to the closing of the commercial halibut fishing season for that year will be adjusted on the date of approval or return. Applications for Transfer Between IFQ and GAF that are transfers of GAF to IFQ that have been approved by the Regional Administrator will be completed not earlier than September 1. Any necessary permits will be sent with the notification of the Regional Administrator's decision on the Application for Transfer Between IFQ and GAF.

(ii) Upon approval of an Application for Transfer Between IFQ and GAF for an initial transfer from IFQ to GAF, NMFS will establish a new GAF account for the GAF applicant's account and issue the resulting new GAF and IFQ permits. If a GAF account already exists from a previous transfer from the same IFQ account in the corresponding management area in that year, NMFS will modify the GAF recipient's GAF account and the IFQ transferor's permit account and issue modified GAF and IFQ permits upon approval of an Application for Transfer Between IFQ and GAF.

(iii) On or after 15 calendar days prior to the closing of the commercial halibut fishing season, NMFS will convert unharvested GAF from a GAF permit holder's account back into IFQ equivalent pounds as specified in paragraph (c)(5)(ii)(E)(2) of this section,

and return the resulting IFQ equivalent pounds to the IFQ permit holder's account from which the GAF were derived, unless prevented by regulations at 15 CFR part 904.

(C) *Complete application.* Applicants must submit a completed Application for Transfer Between IFQ and GAF to the Regional Administrator as instructed on the application. NMFS will notify applicants with incomplete applications of the specific information necessary to complete the application.

(D) *Application for Transfer Between IFQ and GAF approval criteria.* An Application for Transfer Between IFQ and GAF will not be approved until the Regional Administrator has determined that:

(1) The person applying to transfer IFQ to GAF or receive IFQ from a transfer of GAF to IFQ;

(i) Possesses at least one unit of halibut quota share (QS), as defined in § 679.2 of this title, in the applicable Commission regulatory area, either Area 2C or Area 3A, for which the transfer of IFQ to GAF is requested;

(ii) Has been issued an annual IFQ Permit, as defined in § 679.4(d)(1) of this title, for the Commission regulatory area corresponding to the person's QS holding, either Area 2C or Area 3A, resulting from that halibut QS; and

(iii) Has an IFQ permit holder's account with an IFQ amount equal to or greater than amount of IFQ to be transferred in the Commission regulatory area, either Area 2C or Area 3A, for which the transfer of IFQ to GAF is requested.

(2) The person applying to receive or transfer GAF possesses a valid charter halibut permit, community charter halibut permit, or military charter halibut permit in the Commission regulatory area (Area 2C or Area 3A) that corresponds to the IFQ permit area from or to which the IFQ will be transferred.

(3) For a transfer of IFQ to GAF:

(i) The transfer between IFQ and GAF must not cause the GAF permit issued to exceed the GAF use limits in paragraphs (c)(5)(iv)(H)(1) and (2) of this section;

(ii) The transfer must not cause the person applying to transfer IFQ to exceed the GAF use limit in paragraph (c)(5)(iv)(H)(3) of this section; and

(iii) There must be no fines, civil penalties, sanctions, or other payments due and owing, or outstanding permit sanctions, resulting from Federal fishery violations involving either person or permit.

(4) If a Community Quota Entity (CQE), as defined in § 679.2 of this title, submits a "Community Quota Entity

Application for Transfer Between Individual Fishing Quota (IFQ) and Guided Angler Fish (GAF)," the application will not be approved until the Regional Administrator has determined that:

(i) The CQE applying to transfer IFQ to GAF is eligible to hold IFQ on behalf of the eligible community in Commission regulatory area 2C or 3A designated in Table 21 to 50 CFR part 679;

(ii) The CQE applying to transfer IFQ to GAF has received notification of approval of eligibility to receive IFQ for that community as described in § 679.41(d)(1) of this title;

(iii) The CQE applying to receive GAF from a Commission regulatory area 2C or 3A IFQ permit holder holds one or more charter halibut permits or community charter halibut permits for the corresponding area; and

(iv) The CQE applying to transfer between IFQ and GAF has submitted a complete annual report(s) as required by § 679.5(t) of this title.

(E) *Conversion between IFQ and GAF—(1) General.* An annual conversion factor will be calculated to convert between net pounds (whole number, no decimal points) of halibut IFQ and number(s) of GAF (whole number, no decimal points) for Area 2C and Area 3A. This conversion factor will be posted on the NMFS Alaska Region Web site before the beginning of each commercial halibut fishing season.

(2) *Conversion calculation.* The net pounds of IFQ transferred to or from an IFQ permit holder in Commission regulatory area 2C or 3A will be equal to the number(s) of GAF transferred to or from the GAF account of a GAF permit holder in the corresponding area, multiplied by the estimated average net weight determined as follows. For the first calendar year after the effective date of this rule, the average net weight will be estimated for all halibut harvested by charter vessel anglers during the most recent year without a size limit in effect. After the first calendar year after the effective date of this rule, the average net weight will be estimated from the average length of GAF retained in that area during the previous year as reported to RAM via the GAF electronic reporting system. If no GAF were harvested in a year, the conversion factor will be calculated using the same method as for the first calendar year after the effective date of this rule. NMFS will round up to the nearest whole number (no decimals) when transferring IFQ to GAF and when transferring GAF to IFQ. Expressed algebraically, the conversion formula is:

IFQ net pounds = (number of GAF  $\times$  average net weight).

(3) The total number of net pounds converted from unharvested GAF and transferred to the IFQ permit holder's account from which it derived cannot exceed the total number of net pounds NMFS transferred from the IFQ permit holder's account to the GAF permit holder's account for that area in the current year.

(iii) *Guided Angler Fish (GAF) permit*—(A) *General*. (1) A GAF permit authorizes a charter vessel angler to catch and retain GAF in the specified Commission regulatory area, subject to the limits in paragraphs (c)(5)(iv)(A) through (K) of this section, during a charter vessel fishing trip authorized by the charter halibut permit, community charter halibut permit, or military charter halibut permit that is designated on the GAF permit.

(2) A GAF permit authorizes a charter vessel angler to catch and retain GAF in the specified Commission regulatory area from the time of permit issuance until any of the following occurs:

(i) The amount of GAF in the GAF permit holder's account is zero;

(ii) The permit expires at 11:59 p.m. (Alaska local time) on the day prior to 15 days prior to the end of the commercial halibut fishing season for that year;

(iii) NMFS replaces the GAF permit with a modified GAF permit following NMFS approval of an Application for Transfer Between IFQ and GAF; or

(iv) The GAF permit is revoked or suspended under 15 CFR part 904.

(3) A GAF permit is issued for use in a Commission regulatory area (2C or 3A) to the person who holds a valid charter halibut permit, community charter halibut permit, or military charter halibut permit in the corresponding Commission regulatory area. Regulations governing issuance, transfer, and use of charter halibut permits are located in § 300.67.

(4) A GAF permit is assigned to only one charter halibut permit, community charter halibut permit, or military charter halibut permit held by the GAF permit holder in the corresponding Commission regulatory area (2C or 3A).

(5) A legible copy of a GAF permit and the assigned charter halibut permit, community charter halibut permit, or military charter halibut permit appropriate for the Commission regulatory area (2C or 3A) must be carried on board the vessel used to harvest GAF at all times that such fish are retained on board and must be presented for inspection on request of any authorized officer.

(6) No person may alter, erase, mutilate, or forge a GAF permit or document issued under this section (§ 300.65(c)(5)(iii)). Any such permit or document that has been intentionally altered, erased, mutilated, or forged is invalid.

(7) GAF permit holders must retain GAF permit(s) and associated GAF permit logs for two years after the end of the fishing year for which the GAF permit(s) was issued and make the GAF permit available for inspection upon the request of an authorized officer (as defined in Commission regulations).

(B) *Issuance*. The Regional Administrator will issue a GAF permit upon approval of an Application to Transfer Between IFQ and GAF.

(C) *Transfer*. GAF authorized by a GAF permit under this paragraph (§ 300.65(c)(5)(iii)) are not transferable to another GAF permit, except as provided under paragraph (c)(5)(ii) of this section.

(iv) *GAF use restrictions*. (A) A charter vessel angler may harvest GAF only on board a vessel on which the operator has on board a valid GAF permit and the valid charter halibut permit, community charter halibut permit, or military charter halibut permit assigned to the GAF permit for the area of harvest.

(B) The total number of GAF on board a vessel cannot exceed the number of unharvested GAF in the GAF permit holder's GAF account at the time of harvest.

(C) The total number of halibut retained by a charter vessel angler harvesting GAF cannot exceed the sport fishing daily bag limit in effect for unguided sport anglers at the time of harvest adopted by the Commission as annual management measures and published in the **Federal Register** as required in § 300.62.

(D) Retained GAF are not subject to any length limit implemented by the Commission's annual management measures and published in the **Federal Register** as required in § 300.62, if applicable.

(E) Each charter vessel angler retaining GAF must comply with the halibut possession requirements adopted by the Commission as annual management measures and published in the **Federal Register** as required in § 300.62.

(F) The charter vessel guide must ensure that each charter vessel angler complies with paragraphs (c)(5)(iv)(A) through (E) of this section.

(G) The charter vessel guide must immediately remove the tips of the upper and lower lobes of the caudal (tail) fin to mark all halibut caught and

retained as GAF, and if the halibut is filleted, the entire carcass, with head and tail connected as a single piece, must be retained on board the vessel until all fillets are offloaded.

(H) Except as provided in paragraph (c)(5)(iv)(I) of this section, during the halibut sport fishing season adopted by the Commission as annual management measures and published in the **Federal Register** as required in § 300.62, the following GAF use and IFQ transfer limits shall apply. GAF use limits do not apply to military charter halibut permits.

(1) No more than 400 GAF may be assigned to a GAF permit that is assigned to a charter halibut permit or community charter halibut permit endorsed for six (6) or fewer charter vessel anglers in a year.

(2) No more than 600 GAF may be assigned to a GAF permit that is assigned to a charter halibut permit endorsed for more than six (6) charter vessel anglers in a year; and

(3) In Commission regulatory area 2C, a maximum of 1,500 pounds or ten (10) percent, whichever is greater, of the start year fishable IFQ pounds for an IFQ permit, may be transferred from IFQ to GAF. In Commission regulatory area 3A, a maximum of 1,500 pounds or fifteen (15) percent, whichever is greater, of the start year fishable IFQ pounds for an IFQ permit, may be transferred from IFQ to GAF. Start year fishable pounds is the sum of IFQ equivalent pounds, as defined in § 679.2 of this title, for an area, derived from QS held, plus or minus adjustments made to that amount pursuant to § 679.40(d) and (e) of this title.

(I) The halibut QS equivalent of net pounds of halibut IFQ that is transferred to GAF is included in the computation of halibut QS use caps in § 679.42(f)(1)(i) and (ii) of this title.

(J) A CHP holder receiving GAF from a CQE is subject to § 679.42(f)(6) of this title. For a CHP holder who receives GAF from a CQE, the net poundage equivalent of all halibut IFQ received as GAF is included in the computation of that person's IFQ halibut holdings in § 679.42(f)(6) of this title.

(K) Applicability of GAF use restrictions to CQEs. The GAF use restrictions in paragraph (c)(5)(iv)(H) of this section do not apply if:

(1) A CQE transfers IFQ as GAF to a GAF permit that is assigned to one or more charter halibut permits held by that CQE or community charter halibut permits held by that CQE;

(2) A CQE transfers IFQ as GAF to another CQE holding one or more charter halibut permits or community charter halibut permits; or



(3) A CQE transfers IFQ as GAF to a GAF permit that is assigned to a charter halibut permit held by an eligible community resident (as defined at § 679.2) of that CQE community, as defined for purposes of the Catch Sharing Plan for Commission regulatory areas 2C and 3A in § 679.2 of this title, holding one or more charter halibut permits.

(d) *Charter vessels in Commission regulatory area 2C and 3A*—(1) *General requirements*—(i) *Logbook submission*. For a charter vessel fishing trip during which halibut were caught and retained on or after the first Monday in April and on or before December 31, Alaska Department of Fish and Game (ADF&G) Saltwater Sport Fishing Charter Trip Logbook data sheets must be submitted to the ADF&G and postmarked or received no later than 14 calendar days after the Monday of the fishing week (as defined in 50 CFR 300.61) in which the halibut were caught and retained. Logbook sheets for a charter vessel fishing trip during which halibut were caught and retained on January 1 through the first Sunday in April, must be submitted to the ADF&G and postmarked or received no later than the second Monday in April.

(ii) The charter vessel guide is responsible for complying with the reporting requirements of this paragraph (d). The person whose business was assigned an Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook is responsible for ensuring that the charter vessel guide complies with the reporting requirements of this paragraph (d).

(2) *Retention and inspection of logbook*. A person who is required to provide information pursuant to paragraph (d)(4) of this section, or whose business was assigned an Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook and whose charter vessel anglers retain halibut is required to:

(i) Retain all logbook data pages showing halibut harvest for 2 years after the end of the fishing year for which the logbook was issued, and

(ii) Make the logbook available for inspection upon the request of an authorized officer (as defined in Commission regulations).

(3) *Charter vessel guide and crew restriction in Commission regulatory areas 2C and 3A*. A charter vessel guide, charter vessel operator, or crew member may not catch and retain halibut during a charter vessel fishing trip in Commission regulatory area 2C or 3A while on a vessel with charter vessel anglers on board.

(4) *Recordkeeping and reporting requirements in Commission regulatory area 2C and 3A*—(i) *General requirements*. Each charter vessel angler and charter vessel guide on board a vessel in Commission regulatory area 2C or 3A must comply with the following recordkeeping and reporting requirements, except as specified in paragraph (d)(4)(iii)(C) of this section, by the end of the calendar day or by the end of the charter vessel fishing trip, whichever comes first, unless otherwise specified:

(ii) *Logbook reporting requirements*—(A) *Charter vessel angler signature requirement*. Each charter vessel angler who retains halibut caught in Commission regulatory area 2C or 3A must acknowledge that his or her name, license number (if required), and number of halibut retained (kept) are recorded correctly by signing the Alaska Department of Fish and Game Saltwater Charter Logbook data sheet on the line that corresponds to the angler's information.

(B) *Charter vessel guide requirements*. If halibut were caught and retained in Commission regulatory area 2C or 3A, the charter vessel guide must record the following information (see paragraphs (d)(4)(ii)(B)(1) through (10) of this section) in the Alaska Department of Fish and Game Saltwater Charter Logbook:

(1) *Guide license number*. The Alaska Department of Fish and Game sport fishing guide license number held by the charter vessel guide who certified the logbook data sheet.

(2) *Date*. Month and day for each charter vessel fishing trip taken. A separate logbook data sheet is required for each charter vessel fishing trip if two or more trips were taken on the same day. A separate logbook data sheet is required for each calendar day that halibut are caught and retained during a multi-day trip. A separate logbook sheet is also required if more than one charter halibut permit is used on a trip.

(3) *Charter halibut permit (CHP) number*. The NMFS CHP number(s) authorizing charter vessel anglers on board the vessel to catch and retain halibut.

(4) *Guided Angler Fish (GAF) permit number*. The NMFS GAF permit number(s) authorizing charter vessel anglers on board the vessel to harvest GAF.

(5) *Statistical area*. The primary Alaska Department of Fish and Game statistical area code in which halibut were caught and retained.

(6) *Angler sport fishing license number and printed name*. Before a charter vessel fishing trip begins, record

the first and last name of each paying or non-paying charter vessel angler on board that will fish for halibut. For each angler required to be licensed, record the Alaska Sport Fishing License number for the current year, resident permanent license number, or disabled veteran license number. For youth anglers not required to be licensed, record the word "youth" in place of the license number.

(7) *Number of halibut retained*. For each charter vessel angler, record the total number of non-GAF halibut caught and kept.

(8) *Number of GAF retained*. For each charter vessel angler, record the total number of GAF kept.

(9) *Guide signature*. The charter vessel guide acknowledges that the recorded information is correct by signing the logbook data sheet.

(10) *Angler signature*. The charter vessel guide is responsible for ensuring that charter vessel anglers that retain halibut comply with the signature requirements at paragraph (d)(4)(ii)(A) of this section.

(iii) *GAF reporting requirements*—(A) *General*. (1) Upon retention of a GAF halibut, the charter vessel guide must immediately record on the GAF permit log (on the back of the GAF permit) the date that the fish was caught and retained and the total length of that fish as described in paragraphs (d)(4)(iii)(D)(5) and (d)(4)(iii)(D)(7) of this section.

(2) In addition to the recordkeeping and reporting requirements in paragraphs (d)(4)(i) and (ii) of this section, a GAF permit holder must use the NMFS-approved electronic reporting system on the Alaska Region Web site at <http://alaskafisheries.noaa.gov/> to submit a GAF landings report.

(3) A GAF permit holder must submit a GAF landings report by 11:59 p.m. (Alaska local time) on the last calendar day of a fishing trip for each day on which a charter vessel angler retained GAF authorized by the GAF permit held by that permit holder.

(4) If a GAF permit holder is unable to submit a GAF landings report due to hardware, software, or Internet failure for a period longer than the required reporting time, or a correction must be made to information already submitted, the GAF permit holder must contact NOAA Office of Law Enforcement, Juneau, AK, at 800-304-4846 (Select Option 1).

(B) *Electronic Reporting of GAF*. A GAF permit holder must obtain, at his or her own expense, the technology to submit GAF landing reports to the NMFS-approved reporting system for GAF landings.

(C) *NMFS-Approved Electronic Reporting System.* The GAF permit holder agrees to the following terms (see paragraphs (d)(4)(iii)(C)(1) through (3) of this section):

(1) To use any NMFS online service or reporting system only for authorized purposes;

(2) To safeguard the NMFS Person Identification Number and password to prevent their use by unauthorized persons; and

(3) To accept the responsibility of and acknowledge compliance with § 300.4(a) and (b), § 300.65(d), and § 300.66(p) and (q).

(D) *Information entered for each GAF caught and retained.* The GAF permit holder must enter the following information for each charter vessel fishing trip in which GAF were retained under the authorization of the permit holder's GAF permit into the NMFS-approved electronic reporting system (see paragraphs (d)(4)(iii)(D)(1) through (9) of this section) by 11:59 p.m. (Alaska local time) on the last day of a charter fishing trip in which a charter vessel angler retained GAF:

(1) Logbook number from the Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook.

(2) Vessel identification number for vessel on which GAF were caught and retained:

(i) State of Alaska issued boat registration (AK number), or

(ii) U.S. Coast Guard documentation number.

(3) GAF permit number under which GAF were caught and retained.

(4) Alaska Department of Fish and Game sport fishing guide license number held by the charter vessel guide who certified the logbook data sheet.

(5) Date that GAF was caught and retained.

(6) Number of GAF caught and retained.

(7) Length of each GAF caught and retained. Halibut lengths are measured in inches in a straight line from the anterior-most tip of the lower jaw with the mouth closed to the extreme end of the middle of the tail.

(8) Community charter halibut permit only: Community or Port where the charter vessel fishing trip began (i.e., where charter vessel anglers boarded the vessel).

(9) Community charter halibut permit only: Community or Port where the charter vessel fishing trip ended (i.e., where charter vessel anglers or fish were offloaded from the vessel).

(E) *Properly reported landing.* (1) The GAF permit holder is responsible for ensuring that all GAF harvested on board a vessel are debited from the GAF permit holder's account under which the GAF were retained.

(2) A GAF landing confirmation number issued by the NMFS-approved electronic reporting system and recorded by the GAF permit holder on the GAF permit log used to record the dates and lengths of retained GAF, as required in paragraph (d)(4)(iii)(A)(1) of this section, constitutes confirmation that the GAF permit holder's GAF landing is properly reported and the GAF permit holder's account is properly debited.

(3) Instructions for correcting a submitted GAF landing electronic report are at (d)(4)(iii)(A)(4) of this section.

\* \* \* \* \*

■ 6. In § 300.66:

■ a. Redesignate paragraphs (i) through (v) as paragraphs (j) through (w), respectively;

■ b. Revise paragraph (h) introductory text and newly redesignated paragraphs (n), and (s) through (w); and

■ c. Add paragraph (i) to read as follows:

§ 300.66 Prohibitions.

\* \* \* \* \*

(h) Conduct subsistence fishing for halibut while commercial fishing or sport fishing, as defined in § 300.61, from the same vessel on the same calendar day, or possess on board a vessel, halibut harvested while subsistence fishing with halibut harvested while commercial fishing or sport fishing, except that persons authorized to conduct subsistence fishing under § 300.65(g), and who land their total annual harvest of halibut:

\* \* \* \* \*

(i) Conduct commercial and sport fishing for halibut, as defined in § 300.61, from the same vessel on the same calendar day.

\* \* \* \* \*

(n) Exceed any of the harvest or gear limitations specified at § 300.65(c)(5) or adopted by the Commission as annual management measures and published in the **Federal Register** as required in § 300.62.

\* \* \* \* \*

(s) Be an operator of a vessel in Commission regulatory area 2C or 3A without an original valid charter halibut permit for the regulatory area in which

the vessel is operating when one or more charter vessel anglers are on board that are catching and retaining halibut.

(t) Be an operator of a vessel in Commission regulatory area 2C or 3A with more charter vessel anglers on board catching and retaining halibut than the total angler endorsement number specified on the charter halibut permit or permits on board the vessel.

(u) Be an operator of a vessel in Commission regulatory area 2C or 3A with more charter vessel anglers on board catching and retaining halibut than the angler endorsement number specified on the community charter halibut permit or permits on board the vessel.

(v) Be an operator of a vessel on which one or more charter vessel anglers on board are catching and retaining halibut in Commission regulatory areas 2C and 3A during one charter vessel fishing trip.

(w) Be an operator of a vessel in Commission regulatory area 2C or 3A with one or more charter vessel anglers on board that are catching and retaining halibut without having on board the vessel a State of Alaska Department of Fish and Game Saltwater Charter Logbook that specifies the following:

(1) The person named on the charter halibut permit or permits being used on board the vessel;

(2) The charter halibut permit or permits number(s) being used on board the vessel; and

(3) The name and State issued boat registration (AK number) or U.S. Coast Guard documentation number of the vessel.

■ 7. In § 300.67:

■ a. Redesignate paragraphs (i)(2)(v) and (i)(2)(vi) as (i)(2)(vi) and (i)(2)(vii), respectively; and

■ b. Add paragraph (i)(2)(v) to read as follows:

§ 300.67 Charter halibut limited access program.

\* \* \* \* \*

(i) \* \* \*

(2) \* \* \*

(v) The GAF permit is not assigned to a charter halibut permit for which the GAF account contains unharvested GAF, pursuant to § 300.65(c)(5)(iii)(A)(3) and (4);

\* \* \* \* \*

■ 8. Add Tables 1 through 4 to subpart E of part 300 to read as follows:

TABLE 1 TO SUBPART E OF PART 300—DETERMINATION OF COMMISSION REGULATORY AREA 2C ANNUAL COMMERCIAL ALLOCATION FROM THE ANNUAL COMBINED CATCH LIMIT FOR HALIBUT

If the area 2C annual combined catch limit (CCL) in net pounds is:	then the area 2C annual commercial allocation is:
<5,000,000 lb .....	81.7% of the Area 2C CCL.
≥5,000,000 and ≤5,755,000 lb .....	the Area 2C CCL minus a fixed 915,000-lb allocation to the charter halibut fishery.
>5,755,000 lb .....	84.1% of the Area 2C CCL.

TABLE 2 TO SUBPART E OF PART 300—DETERMINATION OF COMMISSION REGULATORY AREA 3A ANNUAL COMMERCIAL ALLOCATION FROM THE ANNUAL COMBINED CATCH LIMIT FOR HALIBUT

If the area 3A annual combined catch limit (CCL) in net pounds is:	then the area 3A annual commercial allocation is:
<10,000,000 lb .....	81.1% of the Area 3A CCL.
≥10,000,000 and ≤10,800,000 lb .....	the Area 3A CCL minus a fixed 1,890,000-lb allocation to the charter halibut fishery.
>10,800,000 and ≤20,000,000 lb .....	82.5% of the Area 3A CCL.
>20,000,000 and ≤25,000,000 lb .....	the Area 3A CCL minus a fixed 3,500,000-lb allocation to the charter halibut fishery.
>25,000,000 lb .....	86.0% of the Area 3A CCL.

TABLE 3 TO SUBPART E OF PART 300—DETERMINATION OF COMMISSION REGULATORY AREA 2C ANNUAL CHARTER HALIBUT ALLOCATION FROM THE ANNUAL COMBINED CATCH LIMIT

If the area 2C annual combined catch limit for halibut in net pounds is:	then the area 2C annual charter allocation is:
<5,000,000 lb .....	18.3% of the Area 2C CCL.
≥5,000,000 and ≤5,755,000 lb .....	915,000 lb.
>5,755,000 lb .....	15.9% of the Area 2C CCL.

TABLE 4 TO SUBPART E OF PART 300—DETERMINATION OF COMMISSION REGULATORY AREA 3A ANNUAL CHARTER HALIBUT ALLOCATION FROM THE ANNUAL COMBINED CATCH LIMIT

If the area 3A annual combined catch limit (CCL) for halibut in net pounds is:	then the area 3A annual charter allocation is:
<10,000,000 lb .....	18.9% of the Area 3A annual combined catch limit.
≥10,000,000 and ≤10,800,000 lb .....	1,890,000 lb.
>10,800,000 and ≤20,000,000 lb .....	17.5% of the Area 3A annual combined catch limit.
>20,000,000 and ≤25,000,000 lb .....	3,500,000 lb.
>25,000,000 lb .....	14.0% of the Area 3A annual combined catch limit.

**50 CFR Chapter VI****PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA**

■ 9. The authority citation for part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447.

■ 10. In § 679.2, revise the definitions of “Eligible community resident”, “IFQ equivalent pound(s)”, “IFQ fee liability”, and “IFQ standard ex-vessel value” to read as follows:

**§ 679.2 Definitions.**

\* \* \* \* \*

*Eligible community resident* means:

(1) For purposes of the IFQ Program, any individual who:

- (i) Is a citizen of the United States;
- (ii) Has maintained a domicile in a rural community listed in Table 21 to

this part for the 12 consecutive months immediately preceding the time when the assertion of residence is made, and who is not claiming residency in another community, state, territory, or country, except that residents of the Village of Seldovia shall be considered to be eligible community residents of the City of Seldovia for the purposes of eligibility to lease IFQ from a CQE; and

(iii) Is an IFQ crew member.

(2) For purposes of the Area 2C and Area 3A catch sharing plan (CSP) in § 300.65(c) of this title, means any individual or non-individual entity who:

(i) Holds a charter halibut permit as defined in § 300.61 of this title;

(ii) Has been approved by the Regional Administrator to receive GAF, as defined in § 300.61 of this title, from a CQE in a transfer between IFQ and GAF pursuant to § 300.65(c)(5)(ii) of this title; and

(iii) Begins or ends every charter vessel fishing trip, as defined in § 300.61 of this title, authorized by the charter halibut permit issued to that person, and on which halibut are retained, at a location(s) within the boundaries of the community represented by the CQE from which the GAF were received. The geographic boundaries of the eligible community will be those defined by the United States Census Bureau.

\* \* \* \* \*

*IFQ equivalent pound(s)* means the weight amount, recorded in pounds and calculated as round weight for sablefish and headed and gutted weight for halibut for an IFQ landing or for estimation of the fee liability of halibut landed as guided angler fish (GAF), as defined in § 300.61 of this title. Landed GAF are converted to IFQ equivalent

pounds as specified in § 300.65(c) of this title.

*IFQ fee liability* means that amount of money for IFQ cost recovery, in U.S. dollars, owed to NMFS by an IFQ permit holder as determined by multiplying the appropriate standard ex-vessel value or, for non-GAF landings, the actual ex-vessel value of his or her IFQ halibut or IFQ sablefish landing(s), by the appropriate IFQ fee percentage and the appropriate standard

ex-vessel value of landed GAF derived from his or her IFQ by the appropriate IFQ fee percentage.

\* \* \* \* \*

*IFQ standard ex-vessel value* means the total U.S. dollar amount of IFQ halibut or IFQ sablefish landings as calculated by multiplying the number of landed IFQ equivalent pounds plus landed GAF in IFQ equivalent pounds by the appropriate IFQ standard price

determined by the Regional Administrator.

\* \* \* \* \*

■ 11. In § 679.4:

■ a. Add paragraph (a)(1)(xv); and

■ b. Revise paragraph (a)(2) to read as follows:

**§ 679.4 Permits.**

(a) \* \* \*

(1) \* \* \*

If program permit type is:

Permit is in effect from issue date through the end of:

For more information, see . . .

\* \* \* \* \*

**(xv) Guided sport halibut fishery permits:**

(A) Charter halibut permit .....	Indefinite .....	\$ 300.67 of this title.
(B) Community charter halibut permit .....	Indefinite .....	\$ 300.67 of this title.
(C) Military charter halibut permit .....	Indefinite .....	\$ 300.67 of this title.
(D) Guided Angler Fish (GAF) permit .....	Until expiration date shown on permit.	\$ 300.65 of this title.

(2) *Permit and logbook required by participant and fishery.* For the various types of permits issued, refer to § 679.5 for recordkeeping and reporting requirements. For subsistence and GAF permits, refer to § 300.65 of this title for recordkeeping and reporting requirements.

\* \* \* \* \*

■ 12. In § 679.5, revise paragraphs (1)(7)(i) and (ii) to read as follows:

**§ 679.5 Recordkeeping and reporting (R&R).**

\* \* \* \* \*

(1) \* \* \*

(7) \* \* \*

(i) *IFQ Registered Buyer Ex-vessel Value and Volume Report—(A) Requirement.* An IFQ Registered Buyer that also operates as a shoreside processor and receives and purchases IFQ landings of sablefish or halibut must submit annually to NMFS a complete IFQ Registered Buyer Ex-vessel Value and Volume Report as described in this paragraph (1) and as provided by NMFS for each reporting period, as described at paragraph (1)(7)(i)(E), in which the Registered Buyer receives IFQ fish.

(B) *Due date.* A complete IFQ Registered Buyer Ex-vessel Value and Volume Report must be postmarked or received by the Regional Administrator by October 15 following the reporting period in which the IFQ Registered Buyer receives the IFQ fish.

(C) *Completed application.* NMFS will process an IFQ Registered Buyer Ex-vessel Value and Volume Report provided that a paper or electronic report is completed by the Registered

Buyer, with all applicable fields accurately filled in, and all required additional documentation is attached.

(1) *Certification, Electronic submittal.* NMFS ID and password of the IFQ Registered Buyer; or

(2) *Certification, Non-electronic submittal.* Printed name and signature of the individual submitting the IFQ Registered Buyer Ex-vessel Value and Volume Report on behalf of the IFQ Registered Buyer, and date of signature.

(D) *Submission address.* The IFQ Registered Buyer must complete an IFQ Registered Buyer Ex-vessel Value and Volume Report and submit by mail to: Administrator, Alaska Region, NMFS, Attn: RAM Program, P.O. Box 21668, Juneau, AK 99802-1668; by fax to: (907) 586-7354; or electronically at <http://alaskafisheries.noaa.gov>. Report forms are available on the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>, or by contacting NMFS at (800) 304-4846, Option 2.

(E) *Reporting period.* The reporting period of the IFQ Registered Buyer Ex-vessel Value and Volume Report shall extend from October 1 through September 30 of the following year, inclusive.

(ii) *IFQ Permit Holder Fee Submission Form—(A) Applicability.* An IFQ permit holder who holds an IFQ permit against which a landing was made must submit to NMFS a complete IFQ Permit Holder Fee Submission Form provided by NMFS.

(B) *Due date and submittal.* A complete IFQ Permit Holder Fee Submission Form must be postmarked or received by the Regional

Administrator not later than January 31 following the calendar year in which any IFQ landing was made.

(C) *Completed application.* NMFS will process an IFQ Permit Holder Fee Submission Form provided that a paper or electronic form is completed by the permit holder, with all applicable fields accurately filled in, and all required additional documentation is attached.

(D) *IFQ landing summary and estimated fee liability.* NMFS will provide to an IFQ permit holder an IFQ Landing and Estimated Fee Liability page as required by § 679.45(a)(2). The IFQ permit holder must either accept the accuracy of the NMFS estimated fee liability associated with his or her IFQ landings for each IFQ permit, or calculate a revised IFQ fee liability in accordance with paragraph (1)(7)(ii)(E) of this section. The IFQ permit holder may calculate a revised fee liability for all or part of his or her IFQ landings.

(E) *Revised fee liability calculation.* To calculate a revised fee liability, an IFQ permit holder must multiply the IFQ percentage in effect by either the IFQ actual ex-vessel value or the IFQ standard ex-vessel of the IFQ landing. If parts of the landing have different values, the permit holder must apply the appropriate values to the different parts of the landings.

(F) *Documentation.* If NMFS requests in writing that a permit holder submit documentation establishing the factual basis for a revised IFQ fee liability, the permit holder must submit adequate documentation by the 30th day after the date of such request. Examples of such documentation regarding initial sales transactions of IFQ landings include

valid fish tickets, sales receipts, or check stubs that clearly identify the IFQ landing amount, species, date, time, and ex-vessel value or price.

(G) *Reporting period.* The reporting period of the IFQ Permit Holder Fee Submission Form shall extend from January 1 to December 31 of the year prior to the January 31 due date.

■ 13. In § 679.40, revise the introductory text and paragraph (c)(1) to read as follows:

**§ 679.40 Sablefish and halibut QS.**

The Regional Administrator shall annually divide the annual commercial fishing catch limit of halibut as defined in § 300.61 of this title and published in the **Federal Register** pursuant to § 300.62 of this title, among qualified halibut quota share holders. The Regional Administrator shall annually divide the TAC of sablefish that is apportioned to the fixed gear fishery pursuant to § 679.20, minus the CDQ reserve, among qualified sablefish quota share holders.

(c) *Calculation of annual IFQ allocation*—(1) *General.* (i) The annual allocation of halibut IFQ to any person (person p) in any IFQ regulatory area (area a) will be equal to the product of the annual commercial catch limit as defined in § 300.61 of this title, after adjustment for purposes of the Western Alaska CDQ Program, and that person's QS divided by the QS pool for that area. Overage adjustments will be subtracted from a person's IFQ pursuant to paragraph (d) of this section; underage adjustments will be added to a person's IFQ pursuant to paragraph (e) of this section. Expressed algebraically, the annual halibut IFQ allocation formula is as follows:

$$IFQ_{pa} = [(fixed\ gear\ TAC_a - CDQ\ reserve_a) \times (QS_{pa}/QS\ pool_a)] - \text{overage adjustment of } IFQ_{pa} + \text{underage adjustment of } IFQ_{pa}.$$

(ii) The annual allocation of sablefish IFQ to any person (person p) in any IFQ regulatory area (area a) will be equal to the product of the TAC of sablefish by fixed gear for that area (after adjustment for purposes of the Western Alaska CDQ Program) and that person's QS divided by the QS pool for that area. Overage adjustments will be subtracted from a person's IFQ pursuant to paragraph (d) of this section; underage adjustments will be added to a person's IFQ pursuant to paragraph (e) of this section. Expressed algebraically, the annual IFQ allocation formula is as follows:

$$IFQ_{pa} = [(fixed\ gear\ TAC_a - CDQ\ reserve_a) \times (QS_{pa}/QS\ pool_a)] - \text{overage adjustment of } IFQ_{pa} + \text{underage adjustment of } IFQ_{pa}.$$

■ 14. In § 679.41, add paragraph (a)(3) to read as follows:

**§ 679.41 Transfer of quota shares and IFQ.**

(3) Any transaction involving a transfer between IFQ and guided angler fish (GAF), as defined in § 300.61 of this title, is governed by regulations in § 300.65(c) of this title.

■ 15. In § 679.42 revise paragraphs (f)(1)(i), (f)(1)(ii), and (f)(6) to read as follows:

**§ 679.42 Limitations on use of QS and IFQ.**

(i) *IFQ regulatory Area 2C.* 599,799 units of halibut QS, including halibut QS issued as IFQ and transferred to GAF, as defined in § 300.61 of this title.

(ii) *IFQ regulatory area 2C, 3A, and 3B.* 1,502,823 units of halibut QS, including halibut QS issued as IFQ and transferred to GAF, as defined in § 300.61 of this title.

(6) No individual that receives IFQ derived from halibut QS held by a CQE, including GAF as defined in § 300.61 of this title, may hold, individually or collectively, more than 50,000 pounds (22.7 mt) of IFQ halibut, including IFQ halibut received as GAF, derived from any halibut QS source.

■ 16. In § 679.45:

■ a. Remove and reserve paragraph (c); and

■ b. Revise paragraphs (a)(1), (a)(2), (a)(3), (a)(4)(i) through (iii), (b), (d)(2) heading, (d)(2)(i)(A) through (C), (d)(2)(ii), (d)(3)(i), (d)(4), (e), and (f) to read as follows:

**§ 679.45 IFQ cost recovery program.**

(1) *Responsibility.* An IFQ permit holder is responsible for cost recovery fees for landings of his or her IFQ halibut and sablefish, including any halibut landed as guided angler fish (GAF), as defined in § 300.61 of this title, derived from his or her IFQ accounts. An IFQ permit holder must comply with the requirements of this section.

(2) *IFQ Fee Liability Determination*—

(i) *General.* IFQ fee liability means a cost recovery liability based on the value of all landed IFQ and GAF derived from the permit holder's IFQ permit(s).

(A) Each year, the Regional Administrator will issue each IFQ permit holder a summary of his or her IFQ equivalent pounds landed as IFQ and GAF as part of the IFQ Landing and Estimated Fee Liability page described at § 679.5(l)(7)(ii)(D).

(B) The summary will include information on IFQ and GAF landings and an estimated IFQ fee liability using the IFQ standard ex-vessel value for IFQ and GAF landings. For fee purposes:

(1) Landings of GAF in IFQ regulatory area 2C or 3A are converted to IFQ equivalent pounds and assessed at the IFQ regulatory area 2C or 3A IFQ standard ex-vessel value.

(2) GAF that is returned to the IFQ permit holder's account pursuant to § 300.65(c) of this title, and subsequently landed as IFQ during the IFQ fishing year, is included in the IFQ fee liability and subject to fee assessment as IFQ equivalent pounds.

(C) The IFQ permit holder must either accept NMFS' estimate of the IFQ fee liability or revise NMFS' estimate of the IFQ fee liability using the IFQ Permit Holder Fee Submission Form described at § 679.5(l)(7)(ii), except that the standard ex-vessel value used to determine the fee liability for GAF is not subject to challenge. If the IFQ permit holder revises NMFS' estimate of his or her IFQ fee liability, NMFS may request in writing that the permit holder submit documentation establishing the factual basis for the revised calculation. If the IFQ permit holder fails to provide adequate documentation on or by the 30th day after the date of such request, NMFS will determine the IFQ permit holder's IFQ fee liability based on standard ex-vessel values.

(ii) *Value assigned to GAF.* The IFQ fee liability is computed from all net pounds allocated to the IFQ permit holder that are landed, including IFQ landed as GAF.

(A) NMFS will determine the IFQ equivalent pounds of GAF landed in IFQ regulatory area 2C or 3A that are derived from the IFQ permit holder's account.

(B) The IFQ equivalent pounds of GAF landed in IFQ regulatory area 2C or 3A are multiplied by the standard ex-vessel value computed for that area to determine the value of IFQ landed as GAF.

(iii) The value of IFQ landed as GAF is added to the value of the IFQ permit holder's landed IFQ, and the sum is multiplied by the annual IFQ fee percentage to estimate the IFQ permit holder's IFQ fee liability.

(3) *Fee collection.* An IFQ permit holder with IFQ and/or GAF landings is responsible for collecting his or her own

fee during the calendar year in which the IFQ fish and/or GAF are landed.

(4) \* \* \*

(i) *Payment due date.* An IFQ permit holder must submit his or her IFQ fee liability payment(s) to NMFS at the address provided at paragraph (a)(4)(iii) of this section not later than January 31 of the year following the calendar year in which the IFQ and/or GAF landings were made.

(ii) *Payment recipient.* Make payment payable to IFQ Fee Coordinator, OMI.

(iii) *Payment address.* Mail payment and related documents to: Administrator, Alaska Region, NMFS, Attn: IFQ Fee Coordinator, Office of Operations, Management, and Information, P.O. Box 21668, Juneau, AK 99802-1668; submit by fax to (907) 586-7354; or submit electronically through the NMFS Alaska Region Home Page at <http://alaskafisheries.noaa.gov>. If paying by credit card, ensure that all requested card information is provided.

\* \* \* \* \*

(b) *IFQ ex-vessel value determination and use*—(1) *General.* An IFQ permit holder must use either the IFQ actual ex-vessel value or the IFQ standard ex-vessel value when determining the IFQ fee liability based on ex-vessel value, except that landed GAF are assessed at the standard values derived by NMFS. An IFQ permit holder must base all IFQ fee liability calculations on the ex-vessel value that correlates to the landed IFQ in IFQ equivalent pounds.

(2) *IFQ actual ex-vessel value.* An IFQ permit holder that uses actual ex-vessel value, as defined in § 679.2, to determine IFQ fee liability for landed IFQ must document actual ex-vessel value for each IFQ permit. The actual ex-vessel value cannot be used to assign value to halibut landed as GAF.

(3) *IFQ standard ex-vessel value*—(i) *Use of standard price.* An IFQ permit holder that uses standard ex-vessel value to determine the IFQ fee liability, as part of a revised IFQ fee liability submission, must use the corresponding standard price(s) as published in the **Federal Register**.

(ii) All landed GAF must be valued using the standard ex-vessel value for the year and for the IFQ regulatory area of harvest—Area 2C or Area 3A.

(iii) *Duty to publish list.* Each year the Regional Administrator will publish a list of IFQ standard prices in the **Federal Register** during the last quarter of the calendar year. The IFQ standard prices will be described in U.S. dollars per IFQ equivalent pound, for IFQ halibut and sablefish landings made during the current calendar year.

(iv) *Effective duration.* The IFQ standard prices will remain in effect

until revised by the Regional Administrator by notification in the **Federal Register** based upon new information of the type set forth in this section. IFQ standard prices published in the **Federal Register** by NMFS shall apply to all landings made in the same calendar year as the IFQ standard price publication and shall replace any IFQ standard prices previously provided by NMFS that may have been in effect for that same calendar year.

(v) *Determination.* NMFS will apply the standard price, aggregated IFQ regulatory area 2C or 3A, to GAF landings. NMFS will calculate the IFQ standard prices to reflect, as closely as possible by month and port or port-group, the variations in the actual ex-vessel values of IFQ halibut and IFQ sablefish landings based on information provided in the IFQ Registered Buyer Ex-Vessel Value and Volume Report as described in § 679.5(l)(7)(i). The Regional Administrator will base IFQ standard prices on the following types of information:

(A) Landed net pounds by IFQ species, port-group, and month;

(B) Total ex-vessel value by IFQ species, port-group, and month; and

(C) Price adjustments, including IFQ retro-payments.

\* \* \* \* \*

(d) \* \* \*

(2) *Calculating the fee percentage.*

\* \* \*

(i) \* \* \*

(A) The IFQ and GAF landings to which the IFQ fee will apply;

(B) The ex-vessel value of that landed IFQ and GAF; and

(C) The costs directly related to the management and enforcement of the IFQ Program, which include GAF costs.

(ii) *Methodology.* NMFS must use the following equation to determine the fee percentage:

$$100 \times (\text{DPC}/\text{V})$$

Where:

“DPC” is the direct program costs for the IFQ fishery for the previous fiscal year, and

“V” is the ex-vessel value determined for IFQ landed as commercial catch or as GAF subject to the IFQ fee liability for the current year.

(3) \* \* \*

(i) *General.* During or before the last quarter of each calendar year, NMFS shall publish the IFQ fee percentage in the **Federal Register**. NMFS shall base any IFQ fee liability calculations on the factors and methodology in paragraph (d)(2) of this section.

\* \* \* \* \*

(4) *Applicable percentage.* The IFQ permit holder must use the IFQ fee percentage in effect for the year in

which the IFQ and GAF landings are made to calculate his or her fee liability for such landed IFQ and GAF. The IFQ permit holder must use the IFQ fee percentage in effect at the time an IFQ retro-payment is received by the IFQ permit holder to calculate his or her IFQ fee liability for the IFQ retro-payment.

(e) *Non-payment of fee.* (1) If an IFQ permit holder does not submit a complete IFQ Permit Holder Fee Submission Form and corresponding payment by the due date described in § 679.45(a)(4), the Regional Administrator will:

(i) *Send Initial Administrative Determination (IAD).* Send an IAD to the IFQ permit holder stating that the IFQ permit holder's estimated fee liability, as calculated by the Regional Administrator and sent to the IFQ permit holder pursuant to § 679.45(a)(2), is the amount of IFQ fee liability due from the IFQ permit holder. An IFQ permit holder who receives an IAD may appeal the IAD, as described in paragraph (h) of this section.

(ii) *Disapprove transfer.* Disapprove any transfer of GAF, IFQ, or QS to or from the IFQ permit holder in accordance with § 300.65(c) of this title and § 679.41(c), until the IFQ fee liability is reconciled, except that NMFS may return unused GAF to the IFQ permit holder's account from which it was derived on or after the automatic GAF return date.

(2) Upon final agency action determining that an IFQ permit holder has not paid his or her IFQ fee liability, as described in paragraph (f) of this section, any IFQ fishing permit held by the IFQ permit holder is not valid until all IFQ fee liabilities are paid.

(3) If payment is not received on or before the 30th day after the final agency action, the matter will be referred to the appropriate authorities for purposes of collection.

(f) *Underpayment of IFQ fee.* (1) When an IFQ permit holder has incurred a fee liability and made a timely payment to NMFS of an amount less than the NMFS estimated IFQ fee liability, the Regional Administrator will review the IFQ Permit Holder Fee Submission Form and related documentation submitted by the IFQ permit holder. If the Regional Administrator determines that the IFQ permit holder has not paid a sufficient amount, the Regional Administrator will:

(i) *Disapprove transfer.* Disapprove any transfer of GAF, IFQ, or QS to or from the IFQ permit holder in accordance with § 300.65(c) of this title and § 679.41(c), until the IFQ fee liability is reconciled, except that NMFS

may return unused GAF to the IFQ permit holder's account from which it was derived 15 days prior to the closing of the commercial halibut fishing season each year.

(ii) *Notify permit holder.* Notify the IFQ permit holder by letter that an insufficient amount has been paid and that the IFQ permit holder has 30 days from the date of the letter to either pay the amount determined to be due or provide additional documentation to prove that the amount paid was the correct amount.

(2) After the expiration of the 30-day period, the Regional Administrator will evaluate any additional documentation submitted by an IFQ permit holder in support of his or her payment. If the Regional Administrator determines that the additional documentation does not

meet the IFQ permit holder's burden of proving his or her payment is correct, the Regional Administrator will send the permit holder an IAD indicating that the permit holder did not meet the burden of proof to change the IFQ fee liability as calculated by the Regional Administrator based upon the IFQ standard ex-vessel value. The IAD will set out the facts and indicate the deficiencies in the documentation submitted by the permit holder. An IFQ permit holder who receives an IAD may appeal the IAD, as described in paragraph (h) of this section.

(3) If the permit holder fails to file an appeal of the IAD pursuant to § 679.43, the IAD will become the final agency action.

(4) If the IAD is appealed and the final agency action is a determination that

additional sums are due from the IFQ permit holder, the IFQ permit holder must pay any IFQ fee amount determined to be due not later than 30 days from the issuance of the final agency action.

(5) Upon final agency action determining that an IFQ permit holder has not paid his or her IFQ fee liability, any IFQ fishing permit held by the IFQ permit holder is not valid until all IFQ fee liabilities are paid.

(6) If payment is not received on or before the 30th day after the final agency action, the matter will be referred to the appropriate authorities for purposes of collection.

\* \* \* \* \*

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